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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 26 अप्रैल, 2019 / 6 वैशाख, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated the 29th *October,* 2018

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

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1	2	3	4	5
1.	101/16	Harnam Singh	E.E. HPPWD, Dharampur	02-07-2018
2.	80/16	Sum Dei	E.E. HPPWD, Killar	02-07-2018
3.	199/16	Lal Dei	E.E. HPPWD, Killar	02-07-2018
4.	628/16	Sanso Devi	E.E. HPPWD, Killar	02-07-2018
5.	757/16	Sanjeev Minhas	Pr. Chief Conservator of Forest & other	02-07-2018
6.	800/16	Anup Chauhan	Pr. Chief Conservator of Forest & other	02-07-2018
7.	852/16	Mast Ram	Pr. Chief Conservator of Forest & other	02-07-2018
8.	854/16	Rakesh Kumar	Pr. Chief Conservator of Forest & other	02-07-2018
9.	855/16	Veena Devi	Pr.Chief Conservator of Forest & other	02-07-2018
10.	856/16	Surinder Kumar	Pr.Chief Conservator of Forest & other	02-07-2018
11.	858/16	Vijay Singh Guleria	Pr. Chief Conservator of Forest & other	02-07-2018
12.	05/18	Ashok	E.E. HPPWD, Jawali	06-07-2018
13.	08/18	Mangat Ram	E.E. HPPWD, Jawali	06-07-2018
14.	11/18	Surinder Singh	E.E. HPPWD, Jawali	06-07-2018
15.	417/16	Kuldeep Singh	E.E. HPPWD, Nurpur	09-07-2018
16.	869/16	Chuhar	E.E. I&PH, Nurpur	10-07-2018
17.	78/14	Tilak Raj	Sericulture Officer Mandi	13-07-2018
18.	374/16	Kamla Kumari	E.E. HPPWD, Killar	24-07-2018
19.	546/16	Kamla Kumari	E.E. I&PH, Killar	24-07-2018
20.	600/15	Mehar Dei	E.E. I&PH/HPPWD, Killar	24-07-2018
21.	167/16	Budhi Ram	E.E. I&PH/HPPWD, Killar	24-07-2018
22.	397/16	Paras Ram	E.E. I&PH/HPPWD, Killar	24-07-2018
23.	383/16	Desh Raj	E.E. I&PH/HPPWD, Killar	24-07-2018
24.	342/16	Mahatam Chand	E.E. I&PH/HPPWD, Killar	24-07-2018
25.	344/16	Devi Chand	E.E. I&PH/HPPWD, Killar	24-07-2018
26.	126/16	Devi Chand	E.E. I&PH/HPPWD, Killar	24-07-2018
27.	162/16	Hira Lal	E.E. I&PH/HPPWD, Killar	24-07-2018
28.	449/16	Leela Devi	E.E. I&PH/HPPWD, Killar	24-07-2018
29.	301/16	Roshan Lal	E.E. I&PH/HPPWD, Killar	24-07-2018
30.	305/16	Jevi Devi	E.E. I&PH/HPPWD, Killar	24-07-2018

31.	296/16	Lal Dei	E.E. I&PH/HPPWD, Killar	24-07-2018
32.	391/16	Saraswati	E.E. I&PH/HPPWD, Killar	24-07-2018
33.	171/16	Tulsi Ram	E.E. I&PH/HPPWD, Killar	24-07-2018
34.	536/16	Surinder Kumar	E.E. I&PH/HPPWD, Killar	24-07-2018
35.	350/16	Jevi	E.E. I&PH/HPPWD, Killar	24-07-2018
36.	543/16	Guddi Devi	E.E. I&PH/HPPWD, Killar	24-07-2018
37.	532/16	Kamlesh	E.E. I&PH/HPPWD, Killar	24-07-2018
38.	159/16	Bhum Dev	E.E. I&PH/HPPWD, Killar	24-07-2018
39.	445/16	Budhi Ram	E.E. I&PH/HPPWD, Killar	24-07-2018
40.	442/16	Meena	E.E. I&PH/HPPWD, Killar	24-07-2018
41.	534/16	Amar Dei	E.E. I&PH/HPPWD, Killar	24-07-2018
42.	572/16	Kishan Lal	E.E. I&PH/HPPWD, Killar	24-07-2018
43.	535/16	Gurdev	E.E. I&PH/HPPWD, Killar	24-07-2018
44.	430/16	Ramesh Kumar	E.E. I&PH/HPPWD, Killar	24-07-2018
45.	390/16	Subhadra Kumari	E.E. I&PH/HPPWD, Killar	24-07-2018
46.	129/16	Khem Singh	E.E. I&PH/HPPWD, Killar	24-07-2018
47.	41/13	Gulab Singh	Manager H.P. Tourism	24-07-2018
48.	723/16	Jiwan Kumar	Er.-*in*-Chief HPPWD & other	27-07-2018
49.	545/15	Kamla Devi	E.E.HPPWD, Dharampur	27-07-2018
50.	88/15	Krishan Lal	D.F.O. Suket	28-07-2018
51.	393/15	Khub Ram	D.F.O. Nachan	28-07-2018
52.	110/13	Jeet Ram	Principal Polytechnic, Sunder Nagar	30-07-2018

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

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

Ref. No. 101/ 2016

Sh. Harnam Singh s/o Sh. Amar Singh, r/o Village Baradta, Tehsil Sarkaghat, Distt. Mandi, H.P. ..*Petitioner.*

Versus

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

02-07-2018 Present : None for the petitioner
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

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

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 80/ 2016

Smt. Sum Dei w/o Sh. Chiri Dass, r/o Vill. And P.O.Purthi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.34 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.34 P.M. None appearance of petitioner or her Ld. Authorised Representative today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 199/ 2016

Smt. Lal Dei w/o Sh. Jagdish Chand, r/o Village Karel, P.O. Ponto, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.33 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.32 P.M. None appearance of petitioner or her Ld. Authorised Representative today is indicative of

the fact that she is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 628/ 2016

Smt. Sanso Devi d/o Shri Chain Singh, r/o Village Chuhuras, P.O. Karyoni, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

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

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

02-07-2018 Present : None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or her Ld. Authorised Representative today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 757/ 2016

Sh. Sanjeev Minhas s/o Sh. C.S. Minhas, r/o Village Matyal, P.O. Chadiyar, Tehsil Palampur, Distt. Kangra, H.P. *..Petitioner.*

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh Shimla.

2. The Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P.

..Respondents.

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.43 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present : None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.43 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 800/ 2016

Sh. Anup Chauhan s/o Sh. Shokin Singh Chauhan, r/o Village Kalhoon, P.O. Bandahu, Tehsil Jaisinghpur, Distt. Kangra, H.P. ..*Petitioner.*

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh Shimla.
2. The Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P.

..*Respondents.*

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.42 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present : None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.42 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 852/ 2016

Sh. Mast Ram s/o Sh. Nidha Ram, r/o Village Massal Tikka, P.O. Massal, Tehsil Nagrota Bagwan, Distt. Kangra, H.P. ..*Petitioner.*

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh Shimla.
2. The Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P.

..*Respondents.*

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

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

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 854/ 2016

Sh. Rakesh Kumar s/o Sh. Kuldeep Sharma, r/o Village & P.O. Bhawarna, Tehsil Palampur, Distt. Kangra, H.P. ..*Petitioner.*

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh Shimla.
2. The Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P.

..Respondents.

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.39 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.39 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 855/ 2016

Smt. Veena Devi w/o Sh. Gurpal Singh, r/o Village & P.O. Dhanag, Tehsil Baijnath, Distt. Kangra, H.P. *..Petitioner.*

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh Shimla.
2. The Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P.

..Respondents.

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.45 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.45 P.M. None appearance of petitioner or her Ld. Authorised Representative today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 856/ 2016

Sh. Surinder Kumar s/o Sh. Damodar Dass, r/o Village Badehad, P.O. Patti, Tehsil Palampur, Distt. Kangra, H.P. ..*Petitioner.*

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh Shimla.
2. The Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P.

..*Respondents.*

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.37 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.37 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No. 858/ 2016

Sh. Vijay Singh Guleria s/o Sh. Kirpal Singh Guleria, r/o Village & P.O. Darang, Tehsil Palampur, Distt. Kangra, H.P. ..*Petitioner.*

Versus

1. Principal Chief Conservator of Forests, Himachal Pradesh Shimla.
2. The Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P.

..*Respondents.*

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.36 A.M. Be awaited and put up after lunch hours.

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

02-07-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.36 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

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

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-07-2018

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

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

Ref. No.05/2018

Shri Ashok Kumar s/o Shri Billu, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..*Respondent.*

06-07-2018 Present : None for petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case called on several times but none has appeared on behalf of petitioner despite due service. It is 11: 30 A.M. Be awaited and it be put up after lunch hours.

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

06-07-2018 Present : None for petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case again called on several times but none has appeared on behalf of petitioner. None appearance of petitioner or his Ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

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

Let copy of the Order/Award be sent to the appropriate govt. for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
06-7-2018

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

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

Ref. No.08/2018

Sh. Mangat Ram s/o Shri Meenku Ram, r/o Village Har Ghatta, P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..*Respondent.*

06-07-2018 Present: None for petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case called on several times but none has appeared on behalf of petitioner despite due service. It is 11: 25 A.M. Be awaited and it be put up after lunch hours.

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

06-07-2018 Present: None for petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case again called on several times but none has appeared on behalf of petitioner. None appearance of petitioner or his Ld. Counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

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

Let copy of the Order/Award be sent to the appropriate govt. for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
06-7-2018

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

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

Ref. No. 11/2018

Sh. Surinder Singh s/o Shri Girdhari Singh, r/o Village Dev Bharari, P.O. Sulyali, Nurpur, District Kangra, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..*Respondent.*

06-07-2018 Present: None for petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case called on several times but none has appeared on behalf of petitioner despite due service. It is 11: 20 A.M. Be awaited and it be put up after lunch hours.

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

06-07-2018 Present: None for petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case again called on several times but none has appeared on behalf of petitioner. None appearance of petitioner or his Ld. Counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

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

Let copy of the Order/Award be sent to the appropriate govt. for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
06-7-2018

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

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

Ref. No. : 417/2016
Date of Institution : 27-06-2016
Date of Decision : 09-07-2018

Shri Kuldeep Singh s/o Shri Karnail Singh, r/o Village Nera, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. ..*Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.

..*Respondents.*

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

For the Petitioner : Sh. S.D. Sharma, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

> "Whether alleged termination of the services of Shri Kuldeep Singh s/o Shri Karnail Singh, r/o Village Nera, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during October, 1990 by (i) the Executive Engineer, Nurpur Division H.P.P.W.D. Nurpur, District Kangra, H.P. (ii) the Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 24-11-2013 after lapse of more than 23 years. If not, keeping in view delay of more than 23 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. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September, 1988 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October, 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September, 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-*in*-Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged

and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September, 1988 in HPPWD Division Nurpur and was disengaged in October, 1990. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in October, 1990 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

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

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of order dated 29-11-2010 Ex. RW1/D, copy of letter dated 18-12-1999 Ex. RW1/E, copy of letter dated 18-1-2000 Ex. RW1/F, copy of mandays of Kusum Sharma Ex. RW1/G1 and G2 and closed evidence.

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

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondents during October, 1990 is/was illegal and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1 : No

Issue No. 2	:	No
Issue No. 3	:	Yes
Issue No. 4	:	No
Relief	:	Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 *and* 2:

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

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days having worked from September, 1988 to October, 1990. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1990 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing 240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November, 1983 by HPPWD Banikhet Divsion. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-*in*-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed in her favour on 18-1-2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in February, 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur

in pursuance to her request allowed by competent authority and that she had been initially engaged in November, 1983 and transferred to Suliali Sub Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division at Jwali and Nurpur in the year 1994. In the case in hand evidence *qua* petitioner revealed that he had been engaged in Suliali Sub Division in September, 1988 wherefrom he was allegedly terminated in the year 1990. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1999 as per Notification dated 21st July 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had been working under Suliali Sub Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of October, 1990 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted moreso when there is no iota of evidence *qua* engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in October, 1990 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4:

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram** vs. **State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand** vs**. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager** vs. **Mohinder Kumar,**

there was a delay of 14 years. **In Naginder Kumar** vs. **HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd.** vs. **Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh** vs. **Sirhind Cooperative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

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

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

17. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 9th day of July, 2018.

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

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

Ref No.	:	869/2016
Date of Institution	:	26-11-2016
Date of decision	:	10-07-2018

Shri Chuhar Singh s/o Shri Jagat Ram, r/o Village Anuhi, P.O. Kotla, Tehsil Jawali, District Kangra, H.P. ...*Petitioner.*

Versus

The Executive Engineer, I.&P.H. Division Nurpur, District Kangra, H.P. ..*Respondent.*

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

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

AWARD

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

> "Whether time to time termination of the services of Shri Chuhar Singh s/o Shri Jagat Ram, r/o Village Anuhi, P.O. Kotla, Tehsil Jawali, District Kangra, H.P. during June, 1995 to 31-12-2005 by the Executive Engineer, I.&P.H., Division Nurpur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits including regularization of services and compensation the above worker is entitled to from the above employer?"

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

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by the respondent as a daily waged on muster roll basis *w.e.f.* 8-6-1995 who worked under the Assistant Engineer, I&PH Sub Division, Kotla but the respondent had been given fictional breaks to petitioner in his service record so that 240 days could not be completed in each calendar year by petitioner so as to avail benefit of Section 25-F of the Industrial Disputes Act, 1947 (hereafter called the 'Act for brevity) for the purpose of regularization. Averments made in claim petition further reveal that after his termination petitioner had approached the Hon'ble Administrative Tribunal filed O.A. No. (D) 231/1997 against fictional breaks which had been given by the respondent from time to time but the aforestated Original Application had been disposed of by the Hon'ble Administrative Tribunal, Shimla with the directions to respondent to consider original application of petitioner but of no avail. Thereafter, respondent had engaged petitioner *w.e.f.* 1-1-2006 who continuously worked till 30-9-2013 without any breaks & that petitioner had been completed 240 days in each calendar year and after attaining the age of superannuation, petitioner had retired from service on 30-9-2013, *vide* office order No.10161-64 dated 28-9-2013. It is contended that respondent had not regularized the service of petitioner for which petitioner had issued demand notice to the respondent as well as other higher authorities under Section 2-A and 2-K of the Industrial Disputes Act, 1947 *vide* demand notice dated 12-8-2014 and copy of same had been forwarded to Labour Officer-*cum*-Conciliation Officer, Dharamshala and thereafter respondent had filed reply to the demand notice on 11th November, 2014 wherein respondent stated that muster roll for 20 days for every month had been issued to petitioner along-with similar persons *w.e.f.* 6/1995 to 2005 as well as opportunity of completion of 240 days had been given to all person including petitioner but petitioner did continue to work with the respondent during the period aforestated. Thereafter, as per the instructions issued by the Principal Secretary (IPH) to the

Government of Himachal Pradesh per letter dated 27-3-2006, the service of petitioner were continuously engaged by the respondent. It is alleged that the respondent had given to petitioner artificial breaks from the year 1995 to 31-12-2005. Not only this, the persons who were working with petitioner or joined the service after him were not given any break by the respondent deliberately. At the same time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Satish Kumar and Roop Lal & ors. worked with the respondent/department without any break and that period of artificial breaks is required to be counted as continuous service for the purpose of regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State Govt. A similar case titled as Rakesh Kumar *vs.* State of H.P. and Anr. in CWP No. 2735/2010 was decided on 29-7-2011 which had been confirmed by the Hon'ble Apex Court on 15-1-2015. Accordingly, petitioner prays for setting aside illegal fictional breaks *i.e.* time to time termination from 1995 to 2005 with prayer for direction to the respondent to give seniority and continuity in service with full back wages and other consequential benefits to petitioner and any other relief petitioner is entitled to.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections *qua* maintainability, petition being bad on ground of delay and laches. On merits, engagement of the services of petitioner from 8-6-1995 having worked upto 2005 intermittently and thereafter regularly upto September, 2013 is admitted. It has been emphatically denied that fictional breaks were given to the petitioner at any point of time in his service rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of State Govt. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and petition was sought to be dismissed.

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

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, copy of letter dated 27-3-2006 Ex. PW1/B, copy of letter dated 5-4-2006 Ex. PW1/C, copy of mandays chart Ex. Pw1/D, copy of letter of retirement dated 28-9-2013 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Kewal Krishan Kapoor, the then Executive Engineer, I&PH Division Nurpur as RW1 tendered Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of seniority list of regular workers Ex. RW1/C, copy of seniority list of daily wagers Ex. RW1/D and closed evidence.

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

8. From the contentions raised, following issues were framed on 09-01-2018 for determination:—

(1) Whether time to time termination of the services of petitioner by the respondent during June, 1995 to 31-12-2005 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 *and 2:*

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

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent *w.e.f.* June, 1995 is not in dispute. It is the admitted case of petitioner that he had worked since June, 1995 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefit of Section 25-B of the Act. The plea of respondent, on the other hand, remains that petitioner had factually worked intermittently as per his own convenience who used to not come on his duty regularly as he willfully absented several times from his duty without any intimation or permission. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner had willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner whenever he unauthorizedly absented from duties and there was nothing evidence of respondent to show that petitioner had abandoned the job. Rather, it is projected to be case as if petitioner came at his own, worked and left without approval of respondent. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given as several co-workmen junior to him namely Muni Ram, Savitri Devi and Rakesh Kumar have been regularized by respondent were not given fictional breaks at any point of time besides there was sufficient work and fund available with respondent.

12. A bare glance at mandays chart Ex. RW1/C would reveal that in the year 1995 petitioner had worked for 142 days, 214 days in the year 1996, 236 days in 1997, 219 days in 1998, 222 ½ days in 1999, 219 days in 2000, 230 days in 2001, 231 days in 2002, 227 days in 2003, 210 days in year 2004, 230 days in 2005, 331 days in the year 2006, 365 days in 2007, 366 days in 2008, 365 days in 2009, 365 days in 2010, 365 days in 2011, 363 days in 2012 and 239 days in 2013. It can be noticed that till 2005 petitioner is shown to have worked for less than 240 days whereas for other remaining years, he had worked for more than 240 days. It may be pertinent to state here that *vide* letter dated 27-3-2006 Ex. PW1/B direction has been given by government to provide muster roll to all labourers engaged there for 15, 18 & 20 days in a month certain situation but this instruction appears to be have been completely ignored by respondent department as

claimant/petitioner was engaged in 1995 much prior to year 2005 and had completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of ten years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent thus in giving fictional break was manifestly arbitrary without any basis. Seniority list of regular labourers I&PH Division has also been relied upon by respondent which is Ex. RW1/C on record besides RW1 had admitted that persons mentioned at serial Nos. 489, 585 to 589, 591 to 593, 596 and 597 are shown to have joined in service after petitioner as reflected in seniority list Ex. RW1/D and their services had been regularized in the years 2006 and 2007 respectively whereas petitioner had joined in June, 1995 had given fictional break as stated above till 2005. Since respondent had not disputed to have engage petitioner in June, 1995, he ought to have been regularized having continuously worked for about 10 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with petitioner have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department *ipso facto* does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse legitimate right of petitioner for regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1995 to 2005 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year and same them have been regularized. In cross-examination, petitioner has admitted that he has been provided work more than 240 days of work after the year 2005 which means the dispute is only for the years 1995 to 2005 as stated in the affidavit. RW1 Shri Kewal Krishan Kapoor has admitted in cross-examination that seniority list Ex. RW1/D showed that some of the labourers in the said seniority list were employed after the engagement of the petitioner and were thus junior to him. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1995 who had not been issued any appointment letter and thus terms and conditions of his engagement were not complied. He has denied that petitioner had been deliberately given breaks in the years from 1995 to 2005 rather when as per case of respondent, petitioner absented no notice was proved to have been issued for his unauthorized absence and thus version of RW1 that petitioner came and left duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record, no notice was given to petitioner for his absence from duty at any point of time. As such, plea of fictional breaks given to the petitioner from years 1995 to 2005 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent gets falsified on this score which seems to have been made with the object to defeat the claim of petitioner. Be it stated that as per office order dated 28-9-2013 Ex. PW1/E, the petitioner has retired after attaining age of superannuation *w.e.f.* 30-9-2013 afternoon. In view of aforesaid discussion, it is held that time to time termination of service of petitioner and giving fictional breaks in service by the respondent from 1995 to 2005 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the

Act, who is held entitled for seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issues in question are thus as stated above decided in part in favour of the petitioner and against the respondent.

Issue No. 3:

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4:

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram** vs. **State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand** vs. **Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager** vs**. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar** vs. **HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd.** vs. **Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

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

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot

be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks from 1995 to 2005 given by the respondent were fictional in nature which shall have no effect on the seniority and continuity of service of the petitioner and seniority of petitioner shall be reckoned from his initial date of engagement till 30-9-2013 (*i.e.* date of superannuation). Accordingly, claim of petitioner is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 10th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Dharamshala, H.P.

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

Ref No.	:	78/2014
Date of Institution	:	24-02-2014
Date of decision	:	18-07-2018

Shri Tilak Raj s/o Shri Sridev, r/o Village Hatnala (Gehra), Post Office and Tehsil Sandhole, District Mandi, H.P. ...*Petitioner.*

Versus

The Sericulture Officer (Tassar) Mandi, District Mandi, H.P . ....*Respondent*.

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

For the Petitioner	:	Sh. S.K. Sharma, Adv.
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

> Whether time to time termination of the services of Shri Tilak Raj, s/o Shri Sridev, r/o Village Hatnala (Gehra), P.O. & Tehsil Sandhole, District Mandi, H.P. during the year 2001 to 2005 by the Sericulture Officer (Tassar) Mandi, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

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

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged initially as daily waged beldar in Sericulture Wing of Industrial department at Sandhole Centre by the respondent *w.e.f.* 24-8-1986 who is working with the respondent till date with fictional breaks. It is alleged that respondent had been given fictional breaks to petitioner in his service record so that 240 days could not be completed in each calendar year by petitioner so as to avail benefit of Section 25-F of the Industrial Disputes Act, 1947 (hereafter called the 'Act for brevity). Averments made in claim petition further reveal that respondent had allowed to petitioner to complete 240 days in the years 1994, 1998, 1999, 2000, 2002, 2006, 2007, 2008, 2009, 2010, 2011, 2012 respectively and other remaining years petitioner had not been allowed to complete 240 days by the respondent. Not only this, the persons who were working with petitioner or joined the service after him were not given any break by the respondent deliberately. At the same time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Amar Nath, Reshmi Devi, Devi Ram, Mathra Devi, Singh Ram, Dabe Ram, Goverdhan Singh, Naku Ram worked with the respondent/department without any break and thereafter their service had been regularized *w.e.f.* 24-7-2008. Thereafter petitioner had been filed Civil Writ Petition No. 9869/2011-G before the Hon'ble High Court of H.P. against fictional breaks which were given to petitioner by the respondent/department and same was disposed of by the Hon'ble High Court *vide* order dated 5-7-2012 with liberty to petitioner to take appropriate remedies as per law however after that petitioner had filed demand notice. It is alleged that petitioner had requested to respondent/department for his regularization but of no avail. It is alleged that when the respondent had given fictional breaks to petitioner he was not gainfully employed anywhere. Accordingly, petitioner prays for setting aside illegal fictional breaks *i.e.* time to time termination from 1997 to 2005 with prayer for direction to the respondent to give seniority and continuity in service with back wages and other consequential benefits to petitioner and any other relief petitioner is entitled to.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections *qua* maintainability. On merits, engagement of the services of petitioner from 24-8-1996 intermittently and thereafter regularly upto 2005 is admitted. It has been emphatically denied that fictional breaks were given to the petitioner at any point of time in his service rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. It is denied that respondent had allowed petitioner to complete 240 days only in the years 1994, 1998, 1999, 2000, 2002, 2006, 2007, 2008, 2009, 2010, 2011 and 2013 respectively. It is further submitted that petitioner had worked with the respondent/department intermittently as per his own convenience however respondent had never given fictional breaks to petitioner. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their

services have been regularized as per requisite criteria for regularization per policy of Govt. and denied that petitioner is entitled for regularization *w.e.f.* 24-7-2008 although petitioner had not completed 240 days of work in each calendar year and as such there was no violation of any provisions of the Act. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and petition was sought to be dismissed.

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

6. On 23rd February, 2016, the respondent had filed amended reply, reiterated his stand as maintained in the earlier reply filed on 16-9-2015. It is stated that sericulture centres are located at different places in Mandi District having minimum and maximum distance separation between two centres *i.e.* about 15 km to 250 km whereas usually preference had been given to local labourers. It is further stated that the service of petitioner had been regularized by the respondent *vide* office letter No.16-5/94-Ind Vol-IX dated 27-9-2014.

7. The petitioner filed amended rejoinder, reiterated his stand as maintained in the earlier rejoinder as well as claim petition.

8. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of order dated 5-7-2012 Ex. PW/1/C, copy of Notification dated 6-2-2014 Ex. PW1/D, copy of letter dated 18-2-2014 Ex. PW1/E, copy of letter dated 6-12-2014 Ex. PW1/F, copy of demand notice Ex. PW1/G and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Vijay Chaudhary, Sericulture Officer, Mandi as RW1 tendered/proved Ex. RW1/A, copy of office order dated 27-9-2014 Ex. RW1/B, copy of mandays chart of petitioner Ex. RW1/C, copies of mandays of Amar Nath, Reshmani Devi, Devi Ram, Mathra Devi, Sindh Ram, Dabe Ram, Goverdhan Singh, Nokhu Ram Ex. RW1/D to Ex. RW1/K respectively and closed evidence.

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

10. From the contentions raised, following issues were framed on 09-12-2015 for determination:—

(1) Whether time to time termination of the services of petitioner during year 2001 to 2005 by the respondent is/was illegal and unjustified? ..*OPP.*

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

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

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Relief	:	Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 *and* 2:

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

13. Factum of petitioner having been appointed as daily waged beldar by the respondent *w.e.f.* 24-8-1986 is not in dispute. It is the admitted case of petitioner that he had worked since August, 1986 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefit of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner had factually worked intermittently as per his own convenience used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from duties. Rather, it is projected to be case as if petitioner came at his own, worked and left it of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to his namely Amar Nath, Reshmani Devi, Devi Ram, Mathra Devi, Singh Ram, Dabe Ram, Goverdhan Singh, Naku Ram have been regularized by respondent and these persons were actually not given fictional breaks at any point of time besides there was sufficient work and funds available.

14. A bare glance at mandays chart Ex. RW1/C would reveal that in the year 1986 petitioner had worked for 26 days, 142 days in 1987, 157 days in 1988, 119 days in 1989, 120 days in 1990, 130 days in 1991, 167 days in 1992, 214 days in 1993, 262 days in 1994, 156 days in 1995, 96 days in 1996, 152 days in 1997, 169 days in 1998, 253 days in 1999, 285 days in 2000, 182 days in 2001, 287 days in 2002, 149 days in 2003, 190 days in 2004, 196 days in 2005, 247 days in 2006, 290 days in 2007, 327 days in 2008, 365 days in 2009, 365 days in 2010, 365 days in 2011, 366 days in 2012, 362 days in 2013 and 254 days in 2014. It can be noticed that except the year 2002 petitioner has been shown to have worked for less than 240 days. Be it stated that petitioner was engaged in 1986 however petitioner has claimed that respondent had given fictional breaks to him from 2001 to 2005 but mandays chart Ex. RW1/C showed that except the year 2002 petitioner had given fictional breaks only in the years 2001, 2003, 2004 and 2005. Thus, break in service being within a period of four years aforestated was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break was thus manifestly arbitrary without any basis. Seniority list of regular labourers Sericulture Department has also been relied upon by petitioner which is Ex. PW1/B on record in which persons figured at serial No. 4 to 9 are shown to have joined in service after petitioner as reflected in seniority list Ex. PW1/B and their services had been regularized in the years 2008 whereas petitioner had joined in August, 1988 had given fictional break as stated above till 2005 except the year 2002. Since respondent had not disputed to have engage petitioner in August, 1988, he ought to have been regularized having continuously worked for about 19 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with petitioner have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department *ipso facto* does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse legitimate right of petitioner for regularization in service.

15. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18, Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001

to 2005 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year and some of them have been regularized. In cross-examination, petitioner has admitted that he has been provided work more than 240 days of work after the year 2005 which means the dispute is only for the years 2001 to 2005 except the year 2002 as such it is clear from mandays chart Ex. RW1/C that petitioner had worked more than 240 days in the year 2002. He has further admitted that he had been regularized by the respondent/department in the year 2014. RW1 Shri Vijay Chaudhary has admitted in cross-examination that persons namely Amar Nath, , Devi Ram, Reshmani Devi, Mathra Devi, Singh Ram, Dabe Ram, Goverdhan and Nokhu Ram as shown in Ex. RW1/K were employed after the engagement of the petitioner and were thus junior to him. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1988 who had not been issued any appointment letter and thus terms and conditions of his engagement were not complied. He has denied that petitioner had been deliberately given breaks in the years from 2001 to 2005 except year 2002 rather when as per case of respondent, petitioner absented no notice was proved to have been issued for his unauthorized absence and thus version of RW1 that petitioner came and left duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record, no notice was given to petitioner for his absence from duty at any point of time. As such, plea of fictional breaks given to the petitioner from years 2001 to 2005 except year 2002 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

16. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent gets falsified on this score which seems to have been made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of service of petitioner and giving fictional breaks in service by the respondent from 2001 to 2005 except year 2002 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act, who is held entitled for seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issues in question are thus as stated above decided in part in favour of the petitioner and against the respondent.

Issue No. 3:

17. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Relief:

18. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement and that intermittent breaks in service from 2001 to 2005 except year 2002 in where petitioner had been worked for more than 240 days as reflected in mandays chart Ex. RW1/C were fictional in nature

which shall have no effect on the seniority and continuity of service of the petitioner and that seniority of petitioner shall be reckoned from the date of his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors who have since been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 18th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Dharamshala, H.P.

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

Ref No.	: 374/2016
Date of Institution	: 02-6-2016
Date of Decision	: 24-7-2018

Smt. Kamla Kumari d/o Sh. Titan Dass, r/o Village Leo, Sahali, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner	:	Sh. I.S. Jaryal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Kamla Kumari d/o Sh. Titan Dass, Village Leo, Sahali, Tehsil Pangi, Distt. Chamba, H.P. during 9/2004 by the Executive

Engineer HPPWD Division, Killar, (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 158 days during the year 2003 to 2004 and has raised her industrial dispute *vide* demand notice dated 27/8/2012 after more than 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1994 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2003 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether termination of the services of the petitioner by the respondent during Sept. 2004 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2003 till September, 2004 whereas the claimant/petitioner alleges that she had worked from 1994 to September, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year 2003 and not in 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 2003 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour

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

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 88 days in the year 2003 and 70 days in 2004 and thus a total of her service in 2003 to 2004 in 02 years she had worked for 158 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 70 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 2007 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2003

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act--Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 158 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 30 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for

back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref No.	:	546/2016
Date of Institution	:	23-8-2016
Date of Decision	:	24-7-2018

Smt. Kamla Kumari w/o Shri Ramesh Chand, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner	:	Sh. I.S. Jaryal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Kamla Kumari w/o Sh. Ramesh Chand, Village Shoon, P.O. Udeen, Tehsil Pangi, Distt. Chamba, H.P. during June, 1999 by the Executive Engineer, HPPWD Division, I&PH Division Killar (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 102 days during the year July, 1998 to June, 1999 and has raised her industrial dispute *vide* demand notice dated 27-8-2012 after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year mentioned as above and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the

year 1994 who continuously worked till October, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2004 by an oral order without any reason whereas several other coworkers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. She further prayed for reinstatement in service *w.e.f.* month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 19, 21 & 23 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have

engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1999, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of the service of petitioner by the respondent during June, 1999 is/was illegal and unjustified as alleged? ..*OPP*.

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief.	:	Petition is partly allowed awarding lump sum compensation of Rs.25,000/- per operative part of award.

REASONS FOR FINDINGS

*Issues No***.** 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till June, 1999 whereas the claimant/petitioner alleges that he had worked from 1994 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1998 to 1999 and not from 1994 to June, 1999. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1998 to June, 1999. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in June, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be

proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 72 days in the year 1998 and 30 days in 1999 and thus a total of her service in 1998 to 1999 in 02 years she had worked for 102 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 30 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after June, 1999 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in June, 1999, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

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

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

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

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

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

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

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

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

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

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

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section-5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial

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

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

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 102 days as per mandays chart on record and that the services of petitioner were disengaged in June, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** *i.e.* demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 50 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e*. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this

Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018

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

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

Ref. No. : 600/2015

Date of Institution : 19-12-2015
Date of Decision : 24-7-2018

Smt. Mehar Dei w/o Shri Amar Singh, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P.
..Petitioner.

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether the industrial dispute raised by the worker Smt. Mehar Dei w/o Shri Amar Singh, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 02-02- 2012 regarding her alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, whether termination of services of Smt. Mehar Dei w/o Shri Amar Singh, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1994 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of

petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Articles 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 19, 21 & 23 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-02-2012 *qua* her termination of service during Sept., 2004 by respondent suffers from the vice of delay and laches as alleged? .*OPP*.

(2) Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was illegal and unjustified as alleged? ..*OPP*.

(3) If issue no.1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

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

Relief

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

Issue No. 1	:	Discussed
Issue No. 2	:	Yes
Issue No. 3	:	Discussed
Issue No. 4	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.1,10,000/- per operative part of award.

REASONS FOR FINDINGS

*Issues No.*1, 2 *and* 3:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as

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

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

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 59 days in the year 1994, 111 days in 1995, 59 days in 1996, 86 days in 1997, 50 days in 1998, 53 days in 1999, 161 days in 2000, 59 days in 2001, 103 days in 2002, 108 days in 2003 and 114 days in 2004 and thus a total of her service in 1994 to 2004 in 11 years she had worked for 963 days in her entire service period. Be it noticed that except the years 1994 to 1999 and 2001 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour

Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 14 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through crossexamination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

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

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

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

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

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

of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

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

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

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

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

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 963 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years** *i.e.* demand notice was given on 02-2-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 37 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e*. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 1,10,000/- (Rupees one lakh ten thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the

petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues Nos. 1, 2 and 3 are answered accordingly.

Issue No. 4:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,10,000/- (Rupees one lakh ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	:	167/2016
Date of Institution	:	17-3-2016
Date of Decision	:	24-7-2018

Shri Budhi Ram s/o Shri Chatter Singh, r/o Village Leo, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether the industrial dispute raised by the worker Shri Budhi Ram s/o Shri Chatter Singh, r/o Village Leo, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 07-08-2013 regarding alleged illegal termination of his services during September, 2004 suffers from delay and latches? If not, whether termination of services of Shri Budhi Ram s/o Shri Chatter Singh, r/o Village Leo, P.O. Sach, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during September, 2004, 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 aggrieved workman is entitled to from the above employer?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 2000 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 12 persons who were junior to petitioner and joined service from 2000 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of

institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 2000 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2008 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs*. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2002 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 8, 10 & 12 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 9 & 11 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 07-08-2013 *qua* his termination of service during Sept., 2004 by the respondent suffers from the vice of delay and laches as alleged? ..*OPP.*

(2) Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was illegal and unjustified as alleged? ..*OPP.*

(3) If issue No. 1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

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

(5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Discussed
Issue No. 2	:	Yes
Issue No. 3	:	Discussed
Issue No. 4	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 3:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 2000 continuously worked till September, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2002 to September, 2004 whereas the claimant/petitioner alleges that he had worked from 2000 to September, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of May, 2002 and not from 2000. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with

a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A re-iterating and re-affirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2002 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 100 days in the year 2002, 96 days in 2003 and 94 days in 2004 and thus a total of his service in 2000 to 2004 in 3 years he had worked for 290 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 94 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all

required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 2006 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2002 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2002 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either**

from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
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> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
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> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** Vs. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

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

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

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

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

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State**

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

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

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
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> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of

judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 290 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given 7-8-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 32 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

Issue No. 4:

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

Relief

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	:	397/2016
Date of Institution	:	16-6-2016
Date of Decision	:	24-7-2018

Shri Paras Ram s/o Shri Dharam Chand, r/o Village Leo, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

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

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

For the Petitioner	:	Sh. I.S. Jaryal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Shri Paras Ram s/o Shri Dharam Chand, r/o Vill. Leo, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. during 09/2004 by the Executive Engineer, H.P.P.W.D. Division Killar (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 18-01-2013 after more than 9 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 66, 67, 58, 105, 93, 66, 67, 85 and 18 days during years 1995, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 respectively and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1995 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages,

seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar Vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during September, 2004 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year, 1995 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A re-iterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service,

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

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 66 days in the year 1995, 67 days in 1997, 58 days in 1998, 105 days in 1999, 93 days in 2000, 66 days in 2001, 67 days in 2002, 85 days in 2003 and 18 days in 2004 and thus a total of his service in 1995 to 2004 in 9 years he had worked for 625 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 18 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004

even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

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

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

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

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

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

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

Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

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

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

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

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

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even

longer delay has been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** Vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs**. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 9 years and actually worked for 625 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non

skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given on 18-1-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 45 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No. : 383/2016
Date of Institution : 01-6-2016
Date of Decision : 24-7-2018

Shri Desh Raj s/o Shri Amar Chand, r/o Village & P.O. Sahali, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Sh. Desh Raj s/o Sh. Amar Chand, Village & P.O. Sahali, Tehsil Pangi, Distt. Chamba H.P. during 7/2004 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 218 days during the year 1999 to 2004 and has raised his industrial dispute *vide* demand notice dated 18-1-2013 after more than 8 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 mentioned as above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1999 who continuously worked till August, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 13 persons who were junior to petitioner and joined service from 1st May, 1999 to 1st September, 2007. In the end of month of August, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August, 2004. He further prayed for reinstatement in service *w.e.f.* month of August, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1999 to August, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2007 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1999 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 9, 11 &

13 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 10 & 12 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether termination of the services of petitioner by the respondent during July, 2004 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief.	:	Petition is partly allowed awarding lump sum compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1999 continuously worked till July, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1999 to July, 2004 whereas the claimant/petitioner alleges that he had worked from 1999 to July, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of October, 1998 till July, 2004 and not upto August, 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1999 to July, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in July, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 27 days in the year 1999, 60 days in 2001, 102 days in 2003 and 29 days in 2004 and thus a total of his service in 1999 to 2004 in 4 years he had worked for 208 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 29 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders

of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision

has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

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

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

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

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

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be

generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

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

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

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

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

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

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 4 years and actually worked for 208 days as per mandays chart on record and that the services of petitioner were disengaged in July, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given 18-1-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A.

representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018

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

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

Ref. No. : 342/2016
Date of Institution : 26-5-2016
Date of Decision : 24-7-2018

Shri Mahatam Chand s/o Shri Shiv Lal, r/o Village & P.O. Sahali, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Shri Mahatam Chand, s/o Shri Shiv Lal, r/o V.P.O. Sahali, Tehsil Pnagi, District Chamba, H.P. during 10/2005 by the Executive Engineer, Killar H.P.P.W.D. Division Killar, District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 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 123, 28 and 27 days during years 2003, 2004 and 2005 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1996 who continuously worked till October, 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of

the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October, 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2004 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar Vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2003 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 07-3-2018 for determination which are as under:—

(1) Whether termination of the services of the petitioner by the respondent during Oct. 2005 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief.	:	Petition is partly allowed awarding lump sum compensation of Rs. 35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 continuously worked till October, 2005 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from

service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2003 to October, 2005 whereas the claimant/petitioner alleges that he had worked from 1996 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of June, 2003 and not from 1996. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 2003 to October, 2005. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 123 days in the year 2003, 28 days in 2004 and 27 days in 2005 and thus a total of his service in 2003 to 2005 in 3 years he had worked for 178 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 27 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2005 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2003 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2005, he had remained unemployed and was not earning anything

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to

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

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

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

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

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

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

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

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

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** Vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

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

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 178 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given in 2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 37 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs**. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No. : 344/2016
Date of Institution : 26-5-2016
Date of Decision : 24-7-2018

Shri Devi Chand s/o Shri Bhani Ram, r/o Village Chalasri, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Shri Devi Chand, s/o Shri Bhani Ram, r/o Village Chalasri, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. during 09/2004 by the Executive Engineer, Killar, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P., who has worked as beldar on daily wages basis and has rasied his industrial dispute after more than 9 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 75, 79, 46, 48, 92 and 45 days during years 1996, 1998, 1999, 2001, 2002, 2003 and 2004 respectively and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1996 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record

who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2017 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during September, 2004 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs. 60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1996 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service

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

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 75 days in the year 1996, 79 days in 1998, 46 days in 1999, 51 days in 2001, 48 days in 2002, 92 days in 2003 and 45 days in 2004 and thus a total of his service in 1996 to 2004 in 7 years he had worked for 436 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 45 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and

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

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

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

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
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> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
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> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v**. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the

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

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

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

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

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

lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

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

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of Section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court—Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial

dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 7 years and actually worked for 436 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given in the year 2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 55 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	:	126/2016
Date of Institution	:	04-3-2016
Date of Decision	:	24-7-2018

Shri Devi Chand s/o Shri Bhagi Ram, r/o Village Monjhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. ....*Petitioner.*

Versus

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

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

For the Petitioner	:	Sh. I.S. Jaryal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether the industrial dispute raised by the worker Shri Devi Chand s/o Shri Bhagi Ram, r/o Village Monjhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil-received in Labour Office, Chamba on 27-8-2012 regarding his alleged illegal termination of service during September, 2004 suffers from delay and laches? If not, whether termination of the services of Shri Devi Chand s/o Shri Bhagi Ram, r/o Village Monjhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of August, 1995 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to September, 2004 be counted 160 days continuous service and regularization of the service of

petitioner *w.e.f.* 01-01-2004 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs*. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during Sept., 2004 by respondent suffers from the vice of delay and laches as alleged? ..*OPP.*

(2) Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was illegal and unjustified as alleged? ..*OPP.*

(3) If Issue No.1 or Issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

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

Relief

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

Issue No. 1	:	Discussed
Issue No. 2	:	Yes
Issue No. 3	:	Discussed
Issue No. 4	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs. 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1995 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities

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

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 50 days in the year 1995, 13 days in 1996, 59 days in 1997, 97.5 days in 1998, 142 days in 1999, 125 days in 2000, 76 days in 2001, 112 days in 2002, 112 days in 2003 and 108 days in 2004 and thus a total of his service in 1995 to 2004 in 10 years he had worked for 894 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 45 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004

even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

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

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

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

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

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

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

Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

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

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

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

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

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has

been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** Vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ workman 9% p.a. will be payable.
>
> [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 894 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non

skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** *i.e.* demand notice was given 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 55 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e*. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs**. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

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

Issue No. 4:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	:	162/2016
Date of Institution	:	17-3-2016
Date of Decision	:	24-7-2018

Shri Hira Lal s/o Shri Rama Nand, r/o Village Hillour, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner	:	Sh. I.S. Jaryal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Sh. Hira Lal s/o Sh. Rama Nand, r/o Village Hillour, P/O Sahali, Tehsil Pangi, District Chamba, H.P. from 2001, by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 179 days, 174 days, 115 days, 107 days, 80 days, and 26 days during the year 1993, 1994, 1995, 1996, 1999 and 2001 and had raised his industrial dispute *vide* demand notice dated 3-4-2012, after delay of more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past services benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of February, 1993 who continuously worked till September, 2001 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2001 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September, 2001 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2001. He further prayed for reinstatement in service *w.e.f.* month of September, 2001 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1993 to September, 2001 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2001 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs*. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1993 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been

denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2001, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether termination of the services of the petitioner by the respondent from 2001 is/was improper and unjustified as alleged? ..*OPP.*

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

(4) Whether the petition is not maintainable in the present form as alleged? ..*OPR.*

(5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed

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

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1993 continuously worked till September, 2001 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1993 to September, 2001. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2001.

No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 179 days in the year 1993, 174 days in 1994, 115 days in 1995, 107 days in 1996, 80 days in 1999 and 26 days in 2001 and thus a total of his service in 1993 to 2001 in 6 years he had worked for 681 days in his entire service period. Be it noticed that except the years 1995, 1996, 1999 and 2001 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 26 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2001 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1993 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Sections 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone

through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2001, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs**. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

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

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

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

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

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

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

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

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be

existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

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

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

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

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

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

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 Supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 681 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years** *i.e.* demand notice was given on 3-4-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 44 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A.

representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No. : 449/2016
Date of Institution : 20-8-2016
Date of Decision : 24-7-2018

Smt. Leela Devi w/o Shri Ram Lal, r/o Village Hillu, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Leela Devi w/o Sh. Ram Lal, Village Hillu, P.O. Udeen, Tehsil Pangi, Distt. Chamba, H.P. from 10/2003 by the Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 352 days during the year 1995 to 2003 and has raised her industrial dispute *vide* demand notice dated 18-1-2013 after more than 9 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 mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1995 who continuously worked till October, 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2003 by an oral order without any reason whereas several other coworkers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that

seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October, 2003 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2003. She further prayed for reinstatement in service *w.e.f.* month of October, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to October, 2003 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether termination of the services of petitioner by the respondent during Oct., 2003 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs. 45,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till October, 2003 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the

backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to October, 2003. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 24 days in the year 1995, 104 in 1997, 53 days in 1998, 75 days in 2002 and 96 days in 2003 and thus a total of her service in 1995 to 2003 in 5 years she had worked for 352 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 96 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had

not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2003 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior-workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2003, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of

Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

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

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

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

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

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

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

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

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

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the**

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

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

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

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

I have gone through the rival contention of the ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments

referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 352 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 18-1-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 50 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 45,000/- (Rupees forty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 45,000/- (Rupees forty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref No.	:	301/2016
Date of Institution	:	12-5-2016
Date of Decision	:	24-7-2018

Shri Roshan Lal s/o Shri Shounki Ram, r/o Village & P.O. Sahali, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

> "Whether alleged termination of services of Sh. Roshan Lal s/o Sh. Shounki Ram, Village & P.O. Sahali, Tehsil Pangi, Distt. Chamba, H.P. during 10/1999 by the Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 751 days during the year 1995 to 1999 and has raised his industrial dispute *vide* demand notice dated 26-8-2012 after more than 11 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 mentioned as above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1995 who continuously worked till October, 1999 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 1999 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October, 1999 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of

Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 1999. He further prayed for reinstatement in service *w.e.f.* month of October, 1999 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to October, 1999 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs*. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1999, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether termination of the services of the petitioner by the respondent during Oct., 1999 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.65,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till October, 1999 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1995 to October, 1999. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was

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

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 170 days in the year 1995, 161 days in 1996, 135 days in 1997, 142 days in 1998 and 143 days in 1999 and thus a total of his service in 1995 to 1999 in 5 years he had worked for 751 days in his entire service period. Be it noticed that except the years 1997 to 1999 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 143 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence thatv large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also

established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1999 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 1999, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not

be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** Vs. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows.
>
> 17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *Vs*. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would

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

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

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

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

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

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner

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

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in

all remained engaged for about 5 years and actually worked for 751 days as per mandays chart on record and that the services of petitioner were disengaged in October, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years** *i.e.* demand notice was given on 26-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 44 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 65,000/- (Rupees sixty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 65,000/- (Rupees sixty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	:	305/2016
Date of Institution	:	12-5-2016
Date of Decision	:	24-7-2018

Smt. Jevi Devi w/o Shri Himlal, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD/I&PH Division Killar, (Pangi), District Chamba, H.P. ...*Respondent.*

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

For the Petitioner	:	Sh. I.S. Jaryal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Jevi Devi, w/o Shri Himlal, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during 08/1999 by the Executive Engineer, H.P.P.W.D. /I&PH Division Killar (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 56, 22 and 9 days during years 1997, 1998 and 1999 respectively and delay of more than 14 years in raising

the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1997 who continuously worked till August, 1999 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August, 1999 by an oral order without any reason whereas several other coworkers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August, 1999 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of August, 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August, 1999. She further prayed for reinstatement in service *w.e.f.* month of August, 1999 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1997 to August, 1999 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2005 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the

respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1999, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether termination of the services of petitioner by the respondent during August, 1999 is/was improper and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No

Issue No. 4	:	Discussed
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs. 20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 continuously worked till August, 1999 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1997 to August, 1999. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically

admitted that no departmental inquiry was initiated against petitioner even after August, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 56 days in the year 1997, 22 days in 1998 and 9 days in 1999 and thus a total of her service in 1997 to 1999 in 3 years she had worked for 82 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 09 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 1999 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone

through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in August, 1999, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs**. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

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

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

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

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

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

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

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

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould

the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

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

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

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

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calander year and her termination was in violation of section 25-F of the I.D.Act—Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

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

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 82 days as per mandays chart on record and that the services of petitioner were disengaged in August, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years** *i.e.* demand notice was given in the year 2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 50 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC**

3473. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	:	296/2016
Date of Institution	:	10-5-2016
Date of Decision	:	24-7-2018

Smt. Lal Dei w/o Shri Shankar, r/o V.P.O. Sahali, Tehsil Pangi, District Chamba, H.P.
..Petitioner.

Versus

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

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

For the Petitioner	:	Sh. I.S. Jaryal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Lal Dei, w/o Shri Shankar Dev, r/o V.P.O. Sahali, Tehsil Pangi, District Chamba, H.P. during 10/2005 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute after 8 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 50,50, 81, 62, 117, 47 and 27 days during years 1994, 1997, 1998, 2002, 2003, 2004 and 2005 respectively and delay of 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1994 who continuously worked till October, 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till

termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October, 2005 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2005, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 7-3-2018 for determination which are as under:—

(1) Whether termination of the services of petitioner by the respondent during Oct., 2005 is/was illegal and unjustified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

(5) Relief

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

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief.	:	Petition is partly allowed awarding lump sum compensation of Rs. 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till October, 2005 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to October, 2005. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 50 days in the year 1994, 50 days in 1997, 81 days in 1998, 62 days in 2002, 117 days in 2003, 47 days in 2004 and 27 days in 2005 and thus a total of her service in 1994 to 2005 in 7 years she had worked for 434 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 27 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2005 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2005, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
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> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** Vs**. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *Vs.* Union of India and Ors.

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

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

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

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

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

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

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** Vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief'.**

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

Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 7 years and actually worked for 434 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given in the year 2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 52 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No. : 391/2016
Date of Institution : 15-6-2016
Date of Decision : 24-7-2018

Smt. Saraswati w/o Shri Devi Singh, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

> "Whether alleged termination of services of Smt. Saraswati w/o Sh. Devi Singh, Village Kuthal, P.O Sach, Tehsil Pangi, Distt. Chamba, H.P during 9/2004 by the Executive Engineer, HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P who had worked as beldar on daily wages basis only for 136 days during the year 1997 to 2004 and has raised her industrial dispute *vide* demand notice dated 27-8-2012 after more than 8 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 mentioned as above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1997 who continuously worked till September 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster- roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the year 1997. She further prayed for reinstatement in service *w.e.f.* September 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time

and again during entire service of petitioner between 1997 to September 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2005 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 30-11-2017 for determination which are as under:—

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 27-8-2012 qua her termination of service during 09/2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*

(2) Whether termination of the services of petitioner by the respondent during 09/2004 is/was illegal and unjustified as alleged? ..*OPP.*

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

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

Relief

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

Issue No. 1 : Discussed
Issue No. 2 : Yes
Issue No. 3 : Discussed
Issue No. 4 : No
Relief : Petition is partly allowed awarding lump sum compensation of Rs. 35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 3:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1997 continuously worked till September 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1997 to September 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities

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

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 56 days in the year 1997, 34 days in 2003 and 46 days in 2004 and thus a total of her service in 1997 to 2004 in 3 years she had worked for 136 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 46 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3

of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 136 days as per mandays chart on record and that the services of petitioner were disengaged in September 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 47 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments

of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

Issue No. 4:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No. : 171/2016
Date of Institution : 17-3-2016
Date of Decision : 24-7-2018

Shri Tulsi Ram s/o Shri Sham Dass, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether the industrial dispute raised by the worker Shri Tulsi Ram s/o Shri Sham Dass, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 02-02-2012 regarding alleged illegal termination of his services during October 2003 suffers from delay and laches? If not, whether termination of services of Shri Tulsi Ram s/o Shri Sham Dass, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during October 2003, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1991 who continuously worked till October 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October 2003 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 2003. He further prayed for reinstatement in service *w.e.f.* month of October 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1991 to October 2003 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2001 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs*. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26

& 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers, copy of letter dated 15-7-2013 Ex. PW1/M, copy of mandays chart Ex. PW1/N and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

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

8. From the contentions raised, following issues were framed on 30-11-2017 for determination which are as under:—

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-2-2012 qua his termination of service during October 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*

(2) Whether termination of the services of petitioner by the respondent during October, 2003 is/was illegal and unjustified as alleged? ..*OPP.*

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

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

Relief

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

Issue No. 1 : Discussed
Issue No. 2 : Yes
Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump-sum compensation of Rs. 85,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis continuously worked with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1996 till October 2003 whereas the claimant/petitioner alleges that he had worked from 1991 to October 2003. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1996 and not from 1991. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1996 to October 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 122 days in the year 1996, 18 days in 1997, 48 days in 1998, 70 days in 1999, 109 days in 2000, 52 days in 2001, 133 days in 2002 and 86 days in 2003 and thus a total of his service in 1996 to 2003 in 8 years he had worked for 638 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 86 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2003 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the

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

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

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned

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

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

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

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

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

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

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

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

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

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 638 days as per mandays chart on record and that the services of petitioner were disengaged in October 2003 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given on 2-2-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 52 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of

delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 85,000/- (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

Issue No. 4:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No. : 536/2016
Date of Institution : 23-8-2016
Date of Decision : 24-7-2018

Shri Surender Kumar s/o Shri Dina Nath, r/o Village Chalasri, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Sh. Surender Kumar s/o Sh. Dina Nath, Village Chalasri, P.O. Udeen, Tehsil Pangi, Distt. Chamba, H.P. during 9/2000 by the Executive Engineer, HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 424 days during the year 7/1997 to 9/2000 and has raised his industrial dispute *vide* demand notice dated 18-1-2013 after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1994 who continuously worked till October 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous

service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September 2007. In the end of month of October 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 2005. He further prayed for reinstatement in service *w.e.f.* month of October 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 19, 21 & 23 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2000, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter

which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during September 2000 is/was legal and justified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1 : No
Issue No. 2 : Discussed
Issue No. 3 : No
Issue No. 4 : Discussed
Relief : Petition is partly allowed awarding lump-sum compensation of Rs. 40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1992 continuously worked till October 1997 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 to September 2000 whereas the claimant/petitioner alleges that he had worked from 1994 to October 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of July 1997 till September 2000 and not from 1994 to October 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1997 to September 2000. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September 2000 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 111 days in the year 1997, 73 days in 1998, 136 days in 1999 and 114 days in 2000 and thus a total of his service in 1997 to 2000 in 4 years he had worked for 434 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 114 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September 2000 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September 2000, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

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

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

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

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

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

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

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

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

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

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial

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

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

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 4 years and actually worked for 434 days as per mandays chart on record and that the services of petitioner were disengaged in September 2000 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** *i.e.* demand notice was given on 18-1-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the

above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	: 350/2016
Date of Institution	: 26-5-2016
Date of Decision	: 24-7-2018

Smt. Jevi w/o Shri Nanak Chand, r/o Village Micham, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Jevi w/o Shri Nanak Chand, r/o Vill. Micham, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. during 09/2004 by the Executive Engineer, H.P.P.W.D. Division Killar, District Chamba, H.P., who has worked as daily wages basis and has raised her industrial dispute after more than 9 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 27, 45, 15, 100, 97, 91.5, 123.5, 115 and 106 days during years 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 respectively and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1994 who continuously worked till September 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2004 when the services of petitioner were terminated by way of oral order, she was not served with one

month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September 2004. She further prayed for reinstatement in service *w.e.f.* month of September 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 19, 21 & 23 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of service of petitioner by the respondent during September 2004 is/was legal and justified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and latches as alleged? ..*OPR.*

Relief

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

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs.85,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1996 till September 2004 whereas the claimant/petitioner alleges that she had worked from 1994 to 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1996 and not from 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of

reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from 1996 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 27 days in the year 1996, 45 days in 1997, 15 days in 1998, 100 days in 1999, 97 days in 2000, 91.5 days in 2001, 123.5 days in 2002, 115 days in 2003 and 106 days in 2004 and thus a total of her service in 1996 to 2004 in 9 years she had worked for 720 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 106 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not

rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of

Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

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

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

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

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

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal

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

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

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F- Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief'.**

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

titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 9 years and actually worked for 720 days as per mandays chart on record and that the services of petitioner were disengaged in September 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given in the year 2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 50 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 85,000/- (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	: 543/2016
Date of Institution	: 23-8-2016
Date of Decision	: 24-7-2018

Smt. Guddi Devi w/o Shri Bheem Singh, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner	: Sh. I.S. Jaryal, AR
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Guddi Devi w/o Sh. Bheem Singh, Village Kuthal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. during 7/1990 by the Executive Engineer, HPPWD Division Killar Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 83 days during the year 1990 and has raised her industrial dispute *vide* demand notice dated 18-7-2013 after more than 22 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 mentioned as above and delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1989 who continuously worked till September 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster- roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2005 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September 2005. She further prayed for reinstatement in service *w.e.f.* month of September 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1989 to September 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-1999 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble

Apex Court titled as Mool Raj Upadhayay *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1990 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 19, 21 & 23 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1990, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of service of petitioner by the respondent during July 1990 is/was legal and justified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief

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

Issue No. 1	:	No
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief	:	Petition is partly allowed awarding lump-sum compensation of Rs. 20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked for May, June and July 1990 whereas the claimant/petitioner alleges that she had worked from 1989 to September 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year 1990 and not in from 1989 to 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged for the months of May, June and July 1990. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the year 1990 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service,

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

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1990. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 83 days in the year 1990 and thus a total of her service in 1990 in 01 year she had worked for 83 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1990 the petitioner had merely worked for 83 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 1990 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of

Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1990 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 1990, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs**. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld.

Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

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

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

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

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

the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

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

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

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

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

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1990 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon□ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007**

(HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 01 year and actually worked for 83 days as per mandays chart on record and that the services of petitioner were disengaged in September 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **22 years** *i.e.* demand notice was given on 18-7-2013. It is also pertinent to mention here that petitioner on

the date of filing claim petition was ageing 40 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	: 532/2016
Date of Institution	: 23-8-2016
Date of Decision	: 24-7-2018

Smt. Kamlesh w/o Shri Budhi Ram, r/o Village & P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner	: Sh. I.S. Jaryal, AR
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Kamlesh w/o Sh. Budhi Ram, Village & P.O. Mindhal, Tehsil Pangi, Distt. Chamba, H.P. during 8/2004 by the Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 688 days during the year 1997 to 2004 and has raised her industrial dispute *vide* demand notice dated 18-7-2013 after more than 8 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 mentioned as above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1997 who continuously worked till August 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August 2004 by an oral order without any reason whereas several other coworkers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month□s wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of August 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August 2004 She further prayed for reinstatement in service *w.e.f.* August 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1997 to August 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2005 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs*. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay

in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of service of petitioner by the respondent during August 2004 is/was legal and justified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

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

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 3:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1997 continuously worked till August 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by her.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1997 to August 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 155 days in the year 1997, 86 days in 1998, 80 days in 1999, 100 days in 2001, 82 days in 2002, 106 days in 2003 and 79 days in 2004 and thus a total of her service in 1997 to 2004 in 7 years she had worked for 606 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 79 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have

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

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

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

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

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

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

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

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

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

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

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

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

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial

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

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

I have gone through the rival contention of the ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 7 years and actually worked for 606 days as per mandays chart on record and that the services of petitioner were disengaged in August 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 18-7-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 45 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay.

Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	: 159/2016
Date of Institution	: 17-3-2016
Date of Decision	: 24-7-2018

Shri Bhum Dev s/o Shri Jog Chand, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P.
..Petitioner.

Versus

The Executive Engineer, HPPWD/IPH Division Killar, Tehsil Pangi, District Chamba, H.P.
..Respondent.

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Sh. Bhum Dev s/o Sh. Jog Chand V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. from 10/1997, by the Executive Engineer, H.P.P.W.D./I.P.H. Division Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 146 days, 173 days, 102 days, 106 days, 135 days and 107 days during the year 1992, 1993, 1994, 1995, 1996 and 1997 and had raised industrial dispute *vide* demand notice dated 2-2-2012 after delay of more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1992 who continuously worked till October 1997 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October 1997 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October 1997 when the services of petitioner

were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October 1997 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 1997. He further prayed for reinstatement in service *w.e.f.* month of October, 1997 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1992 to October 1997 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2000 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 1997 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1997, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during October 1997 is/was legal and justified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1992 continuously worked till October 1997 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba

District and remained engaged from 1992 to October, 1997. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October 1997 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1997. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 146 days in the year 1992, 173 days in 1993, 102 days in 1994, 106 days in 1995, 135 days in 1996 and 107 days in 1997 and thus a total of his service in 1992 to 1997 in 6 years he had worked for 769 days in his entire service period. Be it noticed that except the years 1992 and 1994 to 1997 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1997 the petitioner had merely worked for 107 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999

and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1997 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October 1997, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs**. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu**

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.
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> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in

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

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

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

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

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not

adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in

judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 769 days as per mandays chart on record and that the services of petitioner were disengaged in October 1997 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years** *i.e*. demand notice was given on 2-2-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 39 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No. : 445/2016
Date of Institution : 19-8-2016
Date of Decision : 24-7-2018

Shri Budhi Ram s/o Shri Shiv Lal, r/o Village & P.O. Sechu, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Sh. Budhi Ram s/o Sh. Shiv Lal, Village & P.O. Sechu, Tehsil Pangi, Distt. Chamba, H.P. during 8/2004 by the Executive Engineer,

HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 606 days during the year 1998 to 2004 and has raised his industrial dispute *vide* demand notice dated 27-8-2012 after more than 8 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 mentioned as above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1998 who continuously worked till August 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August 2004. He further prayed for reinstatement in service *w.e.f.* month of August 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1998 to August 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2006 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during August 2004 is/was legal and justified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1 : No
Issue No. 2 : Discussed
Issue No. 3 : No
Issue No. 4 : Discussed
Relief. : Petition is partly allowed awarding lump-sum compensation of Rs. 80,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1998 continuously worked till August 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from 1998 to August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

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

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 15 days in the year 1998, 136 days in 1999, 126 days in 2000, 58 days in 2001, 65 days in 2002, 119 days in 2003 and 87 days in 2004 and thus a total of his service in 1998 to 2004 in 7 years he had worked for 606 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 45 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the

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

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

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned

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

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

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

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

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

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

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

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

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

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

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 7 years and actually worked for 606 days as per mandays chart on record and that the services of petitioner were disengaged in August 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 49 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined

on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

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

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No. : 442/2016
Date of Institution : 19-8-2016
Date of Decision : 24-7-2018

Smt. Meena w/o Shri Thakur, r/o Village Sandharipar, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. ….*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Smt. Meena w/o Sh. Thakur, Village Sandharipar, P.O. Udeen, Tehsil Pangi, Distt. Chamba, H.P. from 7/2004 by the Executive Engineer, HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 194.5 days during the year 2002 to 2004 and has raised her industrial dispute *vide* demand notice dated 18-1-2013 after more than 8 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 mentioned as above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1994 who continuously worked till July 2004 with the respondent/department. Averments

made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of July 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of July 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of July 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of July 2004. She further prayed for reinstatement in service *w.e.f.* month of July 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to July, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2002 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that

if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of service of petitioner by the respondent during July 2004 is/was legal and justified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

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

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2002 till July 2004 whereas the claimant/petitioner alleges that he had worked from 1994 to 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 2002 and not from 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 2002 to July 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in July 2002 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July 2002. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by

the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 64.5 days in the year 2002, 105 days in 2003 and 25 days in 2004 and thus a total of her service in 2002 to 2004 in 3 years she had worked for 194.5 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 25 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2002 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions

of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

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

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief**

accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

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

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

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

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

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

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

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

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

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial

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

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

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 194.5 days as per mandays chart on record and that the services of petitioner were disengaged in July 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 18-1-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 43 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the

above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

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

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

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

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

Announced in the open Court today this 24th day of July, 2018.

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

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

Ref. No.	: 534/2016
Date of Institution	: 23-8-2016
Date of Decision	: 24-7-2018

Miss Amar Dei d/o Shri Dhani Ram, r/o Village Mauji, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

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

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

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

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

"Whether alleged termination of services of Miss. Amar Dei d/o Sh. Dhani Ram, Village Mauji, P.O. Sechu, Tehsil Pangi, Distt. Chamba, H.P. during 10/1997 by the Executive Engineer, HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 165 days during the year 1996 to 1997 and has raised her industrial dispute *vide* demand notice dated 23-8-2012 after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 14 years in raising the industrial dispute what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

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

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1990 who continuously worked till 1997 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of 1997 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of 1997 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at

the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from 1997 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the year 1997. She further prayed for reinstatement in service *w.e.f.* 1997 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1990 to 1997 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2001 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Mool Raj Upadhayay *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 1997 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1997, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

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

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

as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

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

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of service of petitioner by the respondent during October 1997 is/was legal and justified as alleged? ..*OPP.*

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

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

(4) Whether the claim petition is bad on account of delay and latches as alleged? ..*OPR.*

Relief

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

Issue No. 1 : No
Issue No. 2 : Discussed
Issue No. 3 : No
Issue No. 4 : Discussed
Relief : Petition is partly allowed awarding lump-sum compensation of Rs. 65,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4

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

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1996 till October 1997 whereas the claimant/petitioner alleges that he had worked from 1990 to 1997. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1996 and not from 1990. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be

adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1996 to October 1997. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October 1997 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October 1997. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 29 days in the year 1996 and 136 days in 1997 and thus a total of her service in 1996 to 1997 in 2 years she had worked for 165 days in her entire service period. Be it noticed that petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1997 the petitioner had merely worked for 136 and 29 days in the year 1996 aggregating to 165 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous

service of one year and thus it was required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October 1997 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

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

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October 1997, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment**

would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

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

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

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

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

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the**

State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments

referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 165 days as per mandays chart on record and that the services of petitioner were disengaged in October 1997 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years** *i.e.* demand notice was given 23-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 26 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e*. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 65,000/- (Rupees sixty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 65,000/- (Rupees sixty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 572/2016
Date of Institution	: 24-8-2016
Date of Decision	: 24-7-2018

Shri Kishan Lal s/o Shri Duni Chand, r/o Village & P.O. Udeen, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
...*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. I.S. Jaryal, AR
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether alleged termination of services of Sh. Kishan Lal s/o Sh. Duni Chand, Village & P.O. Udeen, Tehsil Pangi, District Chamba, H.P. during 10/2005 by the Executive Engineer, HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 784.5 days during the year 1995 to 2005 and has raised his industrial dispute *vide* demand notice dated 27-8-2012 after more than 7 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 mentioned as above and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1995 who continuously worked till October 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month□s wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 2005. He further prayed for reinstatement in service *w.e.f.* month of October 2005 along-with back wages, seniority including continuity in service as petitioner has

remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to October 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2005, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of service of petitioner by the respondent during October 2005 is/was improper and unjustified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awardinglump-sum compensation of Rs. 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1995 continuously worked till October 2005 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from 1995 to October 2005. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for

making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 92.5 days in the year 1995, 111.5 days in 1996, 56 days in 1997, 41 days in 1998, 55 days in 1999, 87 days in 2000, 51 days in 2001, 109.5 days in 2002, 92 days in 2003, 75 days in 2004 and 14 days in 2005 and thus a total of his service in 1995 to 2005 in 11 years he had worked for 784.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 14 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October 2005 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to

petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October 2005, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors**. v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v*. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon□ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:—

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 784.5 days as per mandays chart on record and that the services of petitioner were disengaged in October 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 55 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined

on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016***) supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3:

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 535/2016
Date of Institution : 23-8-2016
Date of Decision : 24-7-2018

Shri Gurdev s/o Shri Ghasi Ram, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether alleged termination of services of Sh. Gurdev s/o Sh. Ghasi Ram, Village Thandal, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. during September 1999 by the Executive Engineer, HPPWD Division Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 313.5 days during the year 1995 to 1999 and has raised his industrial dispute *vide* demand notice dated Nil (received in the office of Labour Officer, Chamba on 8-5-2012) after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year mentioned as above and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1993 who continuously worked till September 1999 with the respondent/department.

Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 1999 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 1999 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September 1999. He further prayed for reinstatement in service *w.e.f.* month of September 1999 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1993 to September 1999 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1993 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case.

It is also contended that if petitioner had been terminated in 1999, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during September 1999 is/was legal and justified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No
Issue No. 2 : Discussed
Issue No. 3 : No
Issue No. 4 : Discussed
Relief : Petition is partly allowed awarding lump-sum compensation of Rs. 45,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1993 continuously worked till September 1999 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1993 to September 1999. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 50 days in the year 1993, 27 days in 1994, 54 days in 1995, 98.5 days in 1996 and 84 days in 1999 and thus a total of his service in 1998 to 2004 in 5 years he had worked for 313.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 84 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1993 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September 1999 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1993 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September 1999, he had remained unemployed and was not earning anything

thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through crosse-xamination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs**. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to

supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v*. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of

dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 5 years and actually worked for 313½ days as per mandays chart on record and that the services of petitioner were disengaged in September 1999 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** *i.e.* demand notice was given on 8-5-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 48 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v**. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 45,000/- (Rupees forty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 45,000/- (Rupees forty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 430/2016
Date of Institution	: 19-8-2016
Date of Decision	: 24-7-2018

Shri Ramesh Kumar s/o Sh. Roshan Lal, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, Division Killar, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

> "Whether alleged termination of services of Sh. Ramesh Kumar s/o Sh. Roshan Lal, Village Ghissal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. during 6/2000 by the Executive Engineer, HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 18.5 days during the year 2000 and has raised his industrial dispute *vide* demand notice dated 13-12-2013 after more than 13 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 during the year 2000 and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1995 who continuously worked till 2000 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of 2000 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of 2000 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for

any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of 2000 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25- H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the year 2000. He further prayed for reinstatement in service in the year 2000 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to 2000 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2000 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2000, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of service of petitioner by the respondent during 06/2000 is/was illegal and unjustified as alleged? .. *OPP.*

(2) If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petition is not maintainable in the present form as alleged? ..*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes
Issue No. 2 : Discussed
Issue No. 3 : No
Issue No. 4 : Discussed
Relief : Petition is partly allowed awarding lump-sum compensation of Rs. 10,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 2000 continuously worked till June 2000 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked in June 2000 only whereas the claimant/petitioner alleges that he had worked from 1995 to 2000. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of June 2000 and not from 1995. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba

district and remained engaged for June 2000. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in June 2000 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 18.5 days in the year 2000 and thus a total of his service in June 2000 for one month he had worked for 18.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 18.5 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner

remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after June 2000 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2000 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 2000, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot

be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. *(supra)*1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However,

we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v*. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that—

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not

adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:—

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in

judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one month and actually worked for 18.5 days as per mandays chart on record and that the services of petitioner were disengaged in 2000 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years** *i.e*. demand notice was given on 13-12-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 38 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3:

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 390/2016
Date of Institution	: 15-6-2016
Date of Decision	: 24-7-2018

Smt. Subhadra Kumari w/o Shri Surender, r/o Village & P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..*Petitioner*.

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
..*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. I.S. Jaryal, AR
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether alleged termination of services of Smt. Subhadra Kumari w/o Sh. Surender, Village & P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. during 10/2004 by the Executive

Engineer, HPPWD Division Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 601 days during the year 1997 to 2004 and has raised her industrial dispute *vide* demand notice dated 18-1-2013 after more than 8 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 mentioned as above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1997 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month□s wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from September 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service *w.e.f.* September 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1997 to September 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2005 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 19, 21 & 23 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8 From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during Oct. 2004 is/was improper and unjustified as alleged? ..*OPP*.

(2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.

(3) Whether the claim petition is not maintainable in the present form? ..*OPR*.

(4) Whether the claim petition is bad on account of delay and latches on the part of petitioner as alleged? ..*OPR*.

(5) Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	Yes
Issue No. 2	:	Discussed
Issue No. 3	:	No
Issue No. 4	:	Discussed
Relief	:	Petition is partly allowed awarding lump-sum compensation of Rs. 75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from June 1997 till September, 2004 whereas the claimant/petitioner alleges that she had worked from 1997 to October 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till September 2004 and not upto October 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from 1997 to September 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the

Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 152 days in the year 1997, 85 days in 1999, 62 days in 2001, 91 days in 2002, 105 days in 2003 and 106 days in 2004 and thus a total of her service in 1997 to 2004 in 6 years she had worked for 601 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 106 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2004 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined

service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs**. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'erm gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13 **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:—

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief'.**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 601 days as per mandays chart on record and that the services of petitioner were disengaged in September 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given 18-1-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined

on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 129/2016
Date of Institution : 4-3-2016
Date of Decision : 24-7-2018

Shri Khem Singh s/o Shri Jai Dyal, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ..*Petitioner*.

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether the industrial dispute raised by the worker Shri Khem Singh s/o Shri Jai Dyal, r/o Village Thandal, Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil received in Labour Office, Chamba on 8-5-2012 regarding his alleged illegal termination of service during September 2004 suffers from delay and laches? If not, whether termination of the services of Shri Khem Singh s/o Shri Jai Dyal, r/o Village Thandal, Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. during September 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the

year 1995 who continuously worked till September 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster- roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September 2005. He further prayed for reinstatement in service *w.e.f.* month of September 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to September 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2003 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have

engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

(1) Whether termination of service of petitioner by the respondent during September 2004 is/was legal and justified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump-sum compensation of Rs. 1,25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1995 continuously worked till September 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1995 to September 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by

the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 113 days in the year 1995, 144 days in 1996, 50 days in 1997, 112 days in 1998, 28 days in 1999, 141 days in 2000, 125 days in 2001, 120 days in 2002, 125 days in 2003 and 102 days in 2004 and thus a total of his service in 1995 to 2004 in 10 years he had worked for 1060 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 102 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September 2004 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his

service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief**

accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v**. Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v*. Union of India and Ors. (*supra)*1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial

discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lumpsum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1060 days as per mandays chart on record and that the services of petitioner were disengaged in September 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given 8-5-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 40 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e*. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the

above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3:

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 41/2013
Date of Institution : 17-04-2013
Date of Decision : 24-7-2018

Shri Gulab Singh s/o Late Shri Mohan Singh, r/o Village Baini, P.O. Panarsa, Sub-Tehsil Aut, District Mandi, H.P. ..*Petitioner*.

Versus

The Senior Manager, H.P. Tourism Development Corporation (Transport Wing) Manali, District Kullu, H.P. ..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.S. Guleria, Adv.
For the Respondent(s) : Sh. M.P. Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether termination of the services of Sh. Gulab Singh Son of Late Sh. Mohan Singh, r/o Village Baini, P.O. Panarsa, Sub-Tehsil Aut, District Mandi, H.P. by the Senior Manager, H.P. Tourism Development Corporation (Transport Wing) Manali, Distt. Kullu, H.P. during 1995 is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the above stated reference, a addendum dated 15th March, 2018 was received from the appropriate government which reads as under:—

"In continuation to this office notification of number L&E/CWP No. 96/2008, dated 12-03 2013 in respect of industrial dispute of Shri Gulab Singh s/o Late Shri Mohan Singh, r/o Village Baini, P.O. Panarsa, Sub-Tehsil Aut, District Mandi, H.P. *vs*. the Senior Manager, H.P. Tourism Development Corporation (Transport Wing) Manali, District Kullu, H.P. The following party is added as 2nd employer in the *ibid* reference, (2) The Managing Director, H.P. Tourism Development Corporation Limited, Ritz Annexe, Shimla-1."

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as Guide-*cum*-Clerk on daily wage basis from 8-4-1994 by respondents in Transport Wing of H.P. Tourism Development Corporation, Manali, District Kullu, H.P. The petitioner claims that he had been uninterruptedly rendering service to respondents as stated above on daily wage basis who has been orally terminated without any notice illegally. Averment made in the claim petition further revealed that respondent no.1 removed petitioner from service in the year 1995 who thereafter appointed junior workmen namely Shyam Lal, Surajmani, Raj Kumar and Vijay Kumar with the object to deprive petitioner of status and privileges of a permanent workman. It further transpires

from petition that seniority list of workmen had not been prepared by respondents and thus while terminating service of petitioner, respondent had not followed the principle of 'First come Last go' whose preferential rights had been ignored every month when junior workmen had been engaged. It is alleged that respondents had violated Section 25-B read with 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Thus, action of respondents in terminating service of petitioner was illegal not binding on rights of petitioner and was not at all justified. It is further stated that respondents have changed service condition of petitioner by engaging petitioner as utility worker on contractual basis for a period of 89 days and thereafter his service had been again terminated in March 2013 besides maintained that petitioner was out of job since 2013 as stated above. It is alleged that action of respondents in terminating service of petitioner as stated above was malafide falling under the definition of unfair labour practice. It is alleged that petitioner had filed Civil Writ Petition in the year 2012 in which the respondents had undertaken that petitioner would be reengaged as guide-*cum*-clerk after his termination but thereafter instead of engaging petitioner, some other junior workmen had been appointed necessitating issuance of demand notice. The petitioner thus claims seniority as well as regularization according to the policy of the State Govt. for similarly situated persons who have since been regularized. Accordingly, petitioner seeks setting aside oral and illegal retrenchment order with prayer for his reengagement/reinstatement with back wages and all consequential benefits including regularization in service. It is further prayed that period interrupted of service be counted as continuous service for the purpose of work charge status/regularization in accordance with regularization policy of the govt.

5. The respondent no.1 contested the claim petition, filed reply *inter-alia* taken preliminary objections of claim petition being bad for want of impleading HPTDC through its Managing Director as necessary part which was statutory body, maintainability, cause of action. On merits denied that service of petitioner had not been terminated illegally rather petitioner himself absented from duty who refused to execute agreement which was to be executed before joining duty. It is admitted that petitioner was engaged as part time guide-*cum*-clerk @ Rs.7.25/- per hour for a period of 90 days on seasonal basis and was to be paid for four hours a day as per sanction order no. 4250/85 TDC (Admn.) 115-117 dated 8-4-1994 in pursuance to which petitioner had joined on 13-4-1994. It is claimed that petitioner did not execute agreement *w.e.f.* 1-7-1995 onwards and abandoned the service of his own convenience and was thus not entitled for continuity in service. It is asserted that petitioner contested election of BDC member and was consequently elected who thereafter remained elected as BDC member from 29-12-1995 to 25-12-2000 and therefore did not intentionally executed agreement and absented willfully besides maintained that claim petition has been filed with malafide intention. In so far as engagement of Shyam Lal, Suraj Mani, Raj Kumar and Vijay Kumar are concerned, they were stated to have been engaged as helper and 'petrol pump helper' and were not part-time guide-*cum*-clerk like petitioner and as such service of these newly appointed were different from that of petitioner. In so far as regularization seniority of part time is concerned, it is specifically alleged that no such seniority list was prepared for part-time workers particularly petitioner who was engaged as part-time guide-*cum*-clerk @ of Rs.7.25 per hour for four hours and day only in season. It is admitted that petitioner had filed Civil Writ Petition in the year 2012 and *vide* order dated 16-8-2012 the Hon'ble High Court had ordered that as and when additional manpower on account of availability of work was available, the petitioner would be engaged in preference to recruits as fresh hands and that with these observations CWP disposed of. It is alleged that in pursuance aforestated order of Hon'ble High Court petitioner was again engaged for 89 days who executed agreement. It is emphatically denied that respondent has been recoursing to unfair labour practice. It is claimed that since petitioner had abandoned past service as was involved in election activities who contested for Panchayat election and did not return back and thus claim petition was stated to be time barred. The respondent no. 2 was impleaded as party in reference consequent upon issuance of corrigendum as stated above who contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability,

cause of action, suppression of material facts. On merits asserted that petitioner was not retrenched who had abandoned service voluntarily as he refused by executing agreement. In so far as other facts concerning claim petition are concerned respondent no. 2 has adopted reply to that of respondent no.1. It has been denied that action of respondents was malafide or fell under definition of unfair labour practice. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinders to the replies so filed by respondents, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of B.A. certificate Ex. PW1/B, copy of notification Ex. PW1/C, copy of order of Labour Commissioner Ex. PW1/D, copy of Hon'ble High Court order dated 16-8-2012 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent no.1 examined RW1 Shri N.K. Bali, Assistant General Manager, Transport HPTDC Shimla as RW1, tendered/proved his affidavit Ex. RW1/A, copy of notification Ex. RW1/B, copy of office order dated 8-4-1994 regarding engagement Ex. RW1/C, copy of agreement Ex. RW1/D, copy of rejoinder to the reply Mark-X. The respondent no. 2 examined Shri Khub Chand Thakur, Assistant Mangaer, Transport HPTDC, Kullu as RW2, tendered/proved his affidavit Ex. RW2/A and closed evidence.

8. From the contentions raised, following issues were framed by my ld. predecessor on 3-6-2014 for determination:—

(1) Whether the termination of services of Sh. Gulab Singh (petitioner) by the Senior Manager, H.P. Tourism Development Corporation (Transport Wing), Manali, during the year 1995 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue no. 1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation etc. as alleged? ..*OPP.*

(3) Whether the petitioner has himself abandoned his part-time job by not to execute the agreement *w.e.f.* 1-7-1995 as alleged? ..*OPR.*

Relief.

9. It is pertinent to mention here that *vide* Addendum dated 15th March, 2018 was received from the appropriate govt. in which mentioned that the following party is added as 2nd employer in the *ibid* reference *i.e.* The Managing Director, H.P. Tourism Development Corporation Limited, Ritz Annexe, Shimla-I. Thereafter, on 26-6-2018, this court has recasted issue no.1 which is read as under:—

(1) Whether the termination of service of Gulab Singh (petitioner) by the respondents no.1 and 2, during the year 1995 is legal and justified as alleged? ..*OPP.*

10. It is further pertinent to mention here that after recasting of issue no.1, both the parties had not led any additional evidence on recasted issue no.1 *vide* their separate statements on record.

11. I have heard the Ld. Counsel representing parties gone through evidence on record of this case carefully relevant for disposal of present claim petition.

12. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1 : Yes
Issue No. 2 : Discussed
Issue No. 3 : No
Relief (Issue No. 4) : Claim petition is partly allowed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 *and* 3:

13. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

14. It is admitted case of the parties that petitioner had been engaged as part-time guide-*cum*-clerk by respondents *vide* office order no. 4250/85 TDC (Admn.) 115-117 dated 8-4-1994 Ex. RW1/C. It is equally admitted case of the respondents that petitioner had joined on the above said post on 13-4-1994 and continuously worked upto 1st July, 1995 as is also evident from cross-examination of RW1 Shri N.K. Bali, Assistant General Manager, Transport, HPTDC Shimla. Be it stated that this witness of respondents has in unequivocal terms admitted that petitioner during above said period was engaged for 89 days and discontinued for one day and again engaged for 89 days. RW1 has specifically admitted that there was no such official order of department requiring to give break of one day to petitioner in particular which would show that break of one day was made deliberately by respondents due to which intermittent break could be caused. In any case, it has come in evidence that petitioner continued to work till 1-7-1995 establishing that petitioner had worked from 13-4-1994 to 1-7-1995 which also corresponds with the contents of affidavit Ex. PW1/A. It is further established from evidence that petitioner had factually worked for 14 months and 18 days continuously preceding his termination on 1st July, 1995 which necessarily follows that petitioner had worked for 240 days prior to his termination by respondent no.1 from service on 1-7-1995 requiring compliance of provisions of Section 25-F of the Act by respondent no.1 which further mandatorily requires giving one month's notice or wages in lieu thereof. It is admittedly not the case of the respondents that this provisions was adhered to before terminating service of petitioner instead their plea remains that being part-time worker provisions of Section 25-F of the Act did not apply and that petitioner had abandoned the job voluntarily who did not resume duty.

15. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Devinder Singh** vs. **Municipal Council, Sanaur** reported in **AIR 2011 SC 2532** in which the Hon'ble Apex Court has dealt with the definition of workman under Section 2 (s) of the Act and the relevant para of judgment is reproduced below for reference:—

> "(A) Industrial Disputes Act (14 of 1947), S. 2(s). Workman. **Part-time employee, contractual employee, temporary or casual employee. All are workman**……."

16. In the above said judgment even engagement of worker on contract repeatedly, a part-time worker whose retrenchment has been held to be covered under definition of workman under Section 2(s) of Industrial Disputes Act. Ld. Counsel for the respondent on the other hand has relied upon judgment of Hon'ble Apex Court reported in **AIR 2006 SC 1263** titled as **Haryana State Agricultural Marketing Board** v. **Subhash Chand & Anr.,** in the above said judgment the Hon'ble Apex Court has dealt with definition of contractual workman which were excluded from ambit of Section 2(oo) (bb) of the Act. Since judgment of Hon'ble Apex Court (2011) relied upon by the petitioner is a latest judgment as referred to above in which it has been held that even a part-time worker, contractual employee, temporary employee or casual workmen fell within the definition of workman under Industrial Disputes Act and relying upon judgment 2011 of Hon'ble

Apex Court (*supra*) even if petitioner was engaged only for four hours on payment of Rs. 7.25/- per hour for period of 90 he would be squarely covered under definition of workman under the Act.

17. Stepping into witness box as PW1, petitioner Gulab Singh has testified on oath reiterating his claim as maintained in the claim petition. In his cross-examination, petitioner has admitted that he was part-time workman but this aspect will not through away his right under Section 25-F of the Act in view of judgment of Devinder Singh's case (2011 *supra*). Cross-examination of petitioner further revealed that in pursuance to order of Hon'ble High Court in Civil Writ Petition no. 6349/2012 Ex. RW1/E petitioner had been engaged by respondent as utility worker and assured before Hon'ble High Court the petitioner would be engaged as clerk however after engaging him for 89 days, as utility worker his services were again terminated. Not only this in cross-examination of RW2 Shri Khub Chand Thakur who has specifically admitted that **work of tourism was permanent in nature**. At the same time, respondents in their replies have asserted that tourist work were seasonal work for which petitioner has been engaged as part-timer worker. As such, there is deviance in pleadings and proof of respondent on the point of tourism being seasonal or permanent *i.e*. for whole year. RW2 has further admitted that petitioner was engaged as guide-*cum*-clerk and thereafter utility worker besides petitioner was not given any notice while changing service condition moreover when RW1 admitted that job profile of guide-*cum*-clerk and utility worker were different. Significantly, RW2 has admitted that there existed no order *vide* which petitioner was directed to be engaged as utility worker. As such, while complying order of Hon'ble High Court respondent ignored job being offered for engagement to petitioner. RW1 Shri N.K. Bali has admitted in cross-examination, the manner in which intermittent breaks had been given during the period petitioner had been engaged. It has rightly been contended by Ld. Counsel for the petitioner that respondents recoursed to unfair labour practice by engaging petitioner for 89 days and thereafter giving break and engaing again for similar number of days. Thus, breaks in service were being deliberately given to petitioner despite there being no instructions from department as admitted by RW1. Not only this, petitioner was paid in records of respondents for four hours a days but factually worked for more than eight hours. On this score also deliberate break in service would tantamount to unfair labour practice and deliberate act of respondent would entitle to be considered for treating petitioner in continuous service from 13-4-1995 to 1-7-1995. As such, from evidence on record, it can be safely concluded that respondents were required to issue notice under Section 25-F of the Act when petitioner was terminated on 1st July, 1995.

18. Ld. Counsel for the respondents has asserted that petitioner had abandoned the job therefore no notice was given or was not required to be served upon petitioner. At the same time, it has been contended that petitioner was elected as Panchayat Samiti member and consequently BDC member in 1995 and therefore no notice was given to him as stated above and that service of petitioner had been terminated on 1st July, 1995 however notification qua election of member Panchayat Samiti had been issued by the Government on 25-12-1995 Ex. RW1/B and consequently petitioner was elected and made BDC member but from 01-7-1995 to 25-12-1995, the period prior to election from and after date of termination of petitioner on 1-7-1995, respondents had admittedly not issued any notice to petitioner calling upon him to join service. Even after being elected as BDC member petitioner had term of five years from 1995 till 2000 but petitioner was not engaged thereafter and that demand notice was issued in 2005 but respondents thereafter had not made any endevour to engage petitioner particularly when termination of petitioner on 01-7-1995 was illegal and contrary to provisions of Act.

19. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **G.T. Lab and Ors.** v. **Chemicals and Fibres India Ltd.** reported in **AIR 1979 SC 582** in which the Hon'ble Apex Court has held that to establish abandonment of the job it must be established that there was intention to abandon the job. In this judgment Hon'ble Apex Court relied upon previous judgment of Hon'ble Apex Court titled as **Buckingham Co.** v. **Venkatiah** reported

in **AIR 1964 SC 1272.** By merely testifying that petitioner had abandoned the job was not sufficient to establish plea rather it was incumbent upon respondent to establish that he had intention to abandon the job. In this case respondents presumed that due to non-execution of service agreement on 1-7-1995 by petitioner and thereafter not attending office had abandoned the job. RW1 Shri N.K. Bali in para no. 2 of affidavit has alleged that service of petitioner was not terminated rather he himself refused to execute agreement of his free will and thus respondents inferred that petitioner was no more interested to work and had abandoned the job but despite that respondents did not recourse to issuance of registered notice calling upon him to resume duty or asking reason for not signing agreement on 1-7-1995. Be it stated that there is no iota of evidence on record to establishing that agreement was directed to be executed to the petitioner which he did not execute moreover if petitioner had orally refused, a letter was expected to be issued to petitioner by respondent no.1 calling upon him to execute agreement failing which he would not be engaged and as such, bald plea of respondents not substantiated from any corresponding *i.e.* oral or documentary evidence cannot be relied so as to hold that petitioner was asked to execute agreement on 1-7-1995 which he refused sign. Even election of petitioner as member Panchayat Samiti and thereafter BDC member, it could not be presumed that petitioner was not interested to work for which he was initially engaged by respondents. Be it stated that petitioner was elected as BDC member in December 1995 for five years *i.e.* 2000 but while petitioner being elected, it could not presumed that job had been abandoned even from 1-7-1995 to December 1995, there was gap of six months in which respondents could have issued notice calling upon petitioner to join duty which had not been done in this case. In view of the above said discussions, the plea of abandonment of job by petitioner raised by respondents merits rejection. Accordingly, it is held that respondents have violated provisions of Section 25-F of the Act while terminating service of petitioner for reasons stated herein-above.

20. The plea of respondents also remains that petitioner was engaged in pursuance to order of Hon'ble High Court dated 16-8-2012 Ex. PW1/E *vide* which respondents/department was directed to engage petitioner if respondents required additional manpower on account of availability of work and petitioner was to be given preference to new recruits as fresh hands. In compliance to above said directions of the Hon'ble High Court, respondents had engaged petitioner as **utility worker** in pursuance to which entered agreement Ex. RW1/D valid from 1-7-2013 to 28-5-2013 for a period of 89 days on daily wage basis. It is not the case of the respondents that the same agreement which petitioner was asked to execute in the year 1995 was the same to be executed in 2013 as designation of post was different. It has rightly been contended by Ld. Counsel for petitioner that service condition of the petitioner has been changed without notice as petitioner had been given different assignment in pursuance to order of Hon'ble High Court as stated above. As such, by engaging and changing service condition of petitioner in the year 2013 after terminating in 1995 has to be interpreted against respondents who claimed that they had asked petitioner to resume duty which has although not been duly proved.

21. In so far as violation of Section 25-G of the Act is concerned, it would be pertinent to go through affidavit Ex. PW1/A sworn in by petitioner. Para no. 4 of the affidavit aforestated stipulated that seniority list of workmen has not been prepared and that principle of 'First come Last go' was not followed while retrenching/terminating petitioner from service besides junior workmen had been engaged and allowed to work whereas service of petitioner was terminated. RW1 Shri N.K. Bali Assistant General Manager of respondents in cross-examination has admitted that seniority list of seasonal workers was not prepared by respondents. Be it stated that there is no iota of evidence establishing that tourism industry was seasonal in nature rather RW2 has admitted that tourism industry was permanent in a year which established that it was not seasonal as such it was necessary for respondents to have prepared seniority list. RW1 has admitted that one Suraj Mani was junior to petitioner besides several part-time workers at the time of termination of petitioner have since been regularized subject to availability of vacancies. RW2 Shri Khub Chand Thakur,

Assistant Manager has **admitted that five to seven part-time workers were regularized** who were on different cadre which further goes to show that respondents had regularized five to seven part-time workers subject to availability of vacancies but did not maintain any seniority list which was certainly in violation of mandate of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union.** In this judgment Hon'ble Court has held that employer has required to circulate seniority list as prepared but there is no iota of evidence on record remotely suggesting that respondents had provided seniority list of part-time workers as several part-time workers have been regularized as deposed by RW2. As such, plea of petitioner that he was ignored and new hands were allowed to join is liable to be accepted which was certainly in violation of doctrine of 'Last come First go' envisaged under Section 25-G of Act. In view of foregoing discussions and the case law referred to above, it is held that respondents had violated provisions of Section 25-G as well and for similar reason, it can be safely concluded that after terminating petitioner engaged Suraj Mani and several others as has come in evidence but no notice had been issued to petitioner calling upon him to join duty manifestly violated Section 25-H of the Act

.

22. Ld. Counsel for petitioner prays for setting aside order dated 1st July, 1995 of respondents directing respondents to reengage petitioner with back wages and all consequential benefits including regularization in service. It has further been prayed that period of interrupted service be counted as continuous service and period of absence be treated as continuous service for the purpose of work charge status/regularization in accordance with regularization policy of State Govt.

23. In so far as back wages claimed by petitioner after his termination on 1st July, 1995 till he issued demand notice dated 30-10-2005 is concerned, it would be pertinent to mention here that petitioner had admittedly been elected as BDC member and therefore it could not be stated that petitioner was not gainfully employed ever since being elected as BDC member in 1995 till 2000 when his term expired. Similarly, after executing agreement Ex. RW1/B dated 1-3-2013 for 89 days petitioner was engaged on payment of Rs.150/- per day cannot also stated to be period when petitioner was not gainfully employed. On the other hand, respondents witness have not whispered even a single word that petitioner was gainfully employed. Significantly, while cross-examining petitioner, no question on his earning has been asked by Ld. Counsel for respondents. As such, from the time of service of demand notice dated 30-11-2005 petitioner had certainly not worked due to which petitioner is held to be not gainfully employed from 30-10-2005 and thereafter. Taking into consideration peculiar facts and circumstances of case as discussed above, it would be appropriate if petitioner is awarded back wages not from initial date of termination *i.e.* 1-7-1995 rather from the date of demand notice *i.e.* 30th October, 2005. Accordingly, petitioner is held entitled for back wages for period stated above. As such, issue no. 3 is to be answered in negative holding that petitioner has not abandoned his part-time job by not executing agreement on 1-7-1995 and service of the petitioner had been illegally terminated by the respondents *w.e.f.* 1st July, 1995. Issues no. 1 and 2 are thus decided in affirmative whereas issue no. 3 is decided negative and all these issues are answered in favour of petitioner and against the respondent.

Relief:

24. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondents are hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **along-with 50% back wages from the date of raising of demand notice** i.e. **on 30-10-2005.** However, petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.).

Ref. No. 723/2016

Shri Jiwan Kumar s/o Shri Shiv Kumar, r/o Village & P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. ..*Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla (2)
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.

..*Respondents.*

27-07-2018 Present : None for petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for respondents

The case called on several times but none has appeared on behalf of petitioner despite due service. It is 11. 30 A.M. Be awaited and it be put up after lunch hours.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

27-07-2018 Present : None for petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case again called on several times but none has appeared on behalf of petitioner. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate govt. for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
27-7-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 545/2015

Smt. Kamla Devi w/o Shri Roshan Lal, r/o Village Balhra, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.
..*Respondent.*

27-07-2018 Present : None for petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case called on several times but none has appeared on behalf of petitioner despite due service. It is 11.25 A.M. Be awaited and it be put up after lunch hours.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

27-07-2018 Present : None for petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for respondent

The case again called on several times but none has appeared on behalf of petitioner. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate govt. for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
27-7-2018

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 88/2015
Date of Institution : 25-2-2015
Date of Decision : 28-07-2018

Shri Krishan Lal s/o Shri Govind Ram, r/o Village Naundi, P.O. Balag, Sub-Tehsil Nihri, District Mandi, H.P. ..*Petitioner.*

Versus

Divisional Forest Officer, Suket Forest Division Sundernagar, District Mandi, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Deepak Azad, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether the industrial dispute raised by the worker Shri Krishan Lal s/o Shri Govind Ram, r/o Village Naundi, P.O. Balag, Sub-Tehsil Nihri, District Mandi, H.P. before the Divisional Forest Officer, Suket Forest Division Sundernagar, District Mandi, H.P. *vide* demand notice dated 12-03-2009 regarding his alleged illegal termination of service *w.e.f.* 21-08-1999 suffers from delay and laches? If not, whether termination of the services of Shri Krishan Lal s/o Shri Govind Ram, r/o Village Naundi, P.O. Balag, Sub-Tehsil Nihri, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division Sundernagar, District Mandi, H.P. *w.e.f.* 21-08-1999 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 aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wager in the year 1998 in Jhungi Range under Divisional Forest Officer Suket, District Mandi, H.P. where he continued worked till 2000 as he had been disengaged on 17-2-2000 without any notice in violation of provisions of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Averments made in the claim petition further revealed that several co-workers junior to him namely Hans Raj, Het Ram, Pyare Lal, Babu Ram, Desh Raj, Ram Dayal, Prakash Chand, Hem Raj, Radha Krishan, Mohinder, Sheesesh, Bhim Singh, Devi Lal, Shri Ram, Biri Ram, Lakshami Devi, Bhag Singh have been regularized as per seniority list annexed whereas the petitioner being senior to them had been illegally retrenched and thus respondent did not adhere to procedure for retrenchment based doctrine of 'Last come First go' envisaged under Section 25-G of the Act. Aggrieved with his illegal termination, petitioner had approached the Hon'ble Administrative Tribunal by filing O.A. No. 1450/2000 which was disposed of on 15-12-2014 for

want of jurisdiction with liberty to approach the appropriate forum. It is alleged that petitioner was not informed by his counsel about the decision of Hon'ble Administrative Tribunal Shimla and when knowing the same, he had raised demand notice in 2009 which was turned down by the Labour Commissioner on the ground of delay and laches *vide* order dated 6-3-2012. Aggrieved with the order so passed by Labour Commissioner in declining to make reference before the Labour Court, the petitioner filed Civil Writ Petition No. 8537/2014 which was allowed and the reference was thereafter made by appropriate govt. before this court for adjudication. It is alleged that service of petitioner had been terminated by respondent without any notice and recoursing to unfair labour practice as petitioner was not given work charge and regular status in regular pay scale. It is alleged that action of the respondent to not regularize claimant as petitioner who had completed 240 days of continuous service in the year 1999 was illegally terminated his service in violation of mandatory provisions of the Act was illegal and unjustified. It is alleged that petitioner after his termination has remained unemployed whereas respondent had sufficient work and funds to engage him. Accordingly, petitioner seeks his reinstatement in service with quashing order of retrenchment/disengagement with back wages for intermittent break period consequential relief and to any other relief to which petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner had been engaged in Jhungi Forest Range Suket Forest Division in September 1998 who worked upto 1999 and thereafter the construction of Nihri Balag Forest Road was completed due to which service of petitioner was terminated. Relying upon the mandays chart, it claimed that several co-workers namely Mohinder , Ganga Ram, Babu Ram, Pyare Lal, Hem Raj, Inder Singh, Radhakrishan, Hans Raj, Ram Dayal worked with the respondent/department out of which six have been regularized in Septem 2007 and 2012 who fulfilled the terms and conditions required for regularization as daily wager *i.e*. after completion of eight years of continuous service with minimum 240 days in each calendar year. However co-workmen namely Pyare Lal, Hans Raj and Ramdayal have also been as intermittent casual labourers with respondent/department till date. It is asserted that rest of daily wagers as named in the present claim petition did not work with respondent as such respondent never violated principle of 'Last come First go' as contended by claimant/petitioner. It is admitted that demand notice dated 12-3-2009 was sent by petitioner after lapse of four years and same was declined by Labour Commissioner on ground of delay and laches on 16-3-2012. It is asserted that petitioner had been engaged for specific work of construction of Nihri Balag Forest Road and on completion on the road, the service of petitioner had automatically disengaged besides maintained and case of present claim was different that of Kanta Devi *vs*. State of H.P. It is denied that respondent had recoursed to unfair labour practice. It is denied that respondent had violated provisions of Section 25-G of the Act. Relying upon mandays chart, it has been contended that petitioner had not completed continuous service as daily wager with minimum 240 days in each calendar year and thus was not entitled for relief as claimed. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of seniority list. The petitioner examined Shri Radha Krishan as PW2, tendered/proved his affidavit Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division at Sundernagar as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 14-12-2016 for determination:—

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 12-3-2009 qua his termination of service *w.e.f.* 21-08-1999 by respondent suffers from the vice of delay and laches as alleged? ..*OPP.*

(2) Whether termination of the services of petitioner by the respondent *w.e.f.* 21-08-1999 is/was illegal and unjustified as alleged? ..*OPP.*

(3) If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

(4) Whether the claim petition is not maintainable in the present form? ..*OPR.*

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lumpsum compensation of Rs. 40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 *to* 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B reveals that petitioner had been engaged on 21-9-1998 who worked till 20-8-1999 and during this period in all he had worked for **78 days** in the year **1998** whereas in the year 1999 had worked for **186** days. Thus petitioner has in all worked for 254 days. Admittedly, petitioner was disengaged on 20-8-1999 is in preceding 12 months had worked for more than 240 days attracting provisions of Section 25-F of the Act which requires issuance of notice prior to termination. The plea of respondent on the other hand, simplicitor remains that petitioner had been engaged only for Nihri Balag Forest Road but there is no *iota* of evidence on record except uncorroborated testimony of RW1 which showed that petitioner was appointed for specific purpose but certainly terms and conditions of engagement of petitioner were not settled and as such when petitioner was disengaged without serving any notice respondent had certainly violated provisions of Section 25-F of the Act as in the witness box petitioner has filed affidavit Ex. PW1/A reiterated his stand as maintained in claim petition. On the other hand, respondent has failed to establish compliance of Section 25-F of the Act either by issuing notice under Section 25-F or wages of one month in lieu thereof. As such, respondent is held to have violated provisions of Section 25-F of the Act while terminating service of petitioner.

12. In so far as provisions of Section 25-G is concerned, petitioner has examined himself as PW1 besides one Radha Krishan PW2 who had worked with the respondent and this witness too had been engaged by respondent. Before adverting to testimony of petitioner as PW1, it would be relevant to mention here that for applicability of Section 25-G, it not necessary that workman must have worked for 240 days preceding his termination as has been held in **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419**. PW2 Radha Krishan has in unambiguous terms deposed that petitioner had been appointed as daily wager on 29-9-1998 who worked continuously upto 2000 when his service were terminated without any notice as reflected in affidavit Ex. PW2/A of this witness who has further maintained that Hans Raj, Het Ram, Pyare Lal, Ram Dayal, Prakash Chand, Hem Raj, Inder Singh, Santosh Kumar, Mohinder, Hari Singh , Sheesh, Bhim Singh, Devi Lal, Shri Ram, Biri Singh, Luxmi Devi, Bhag Singh were junior to claimant/petitioner have been regularized as per seniority list annexed. Be it stated that Ex. PW1/B is the seniority list of daily wage labourers as it stood on 30-11-2011 of Suket Forest Division and names of all the persons referred in the affidavit stands incorporated in this list. Be it stated that nothing in cross-examination of this witness could be elicited except that this witness knew the petitioner from childhood who belonged to the village of the petitioner. Cross-examination of this witness further revealed that this witness had worked with petitioner for about three months at the same place of posting. From testimony of PW2 coupled with seniority list, it is established that several persons as named in the affidavit were junior to petitioner who had been engaged after 2007 when petitioner was initially engaged and co-workmen have been regularized as ld. Dy. D.A. for the respondent/State could not extract any fact which would make testimony of PW2 unreliable.

13. PW1 the petitioner has proved his affidavit as well as seniority list Ex. PW1/B revealing that junior co-workmen have been regularized in service whereas his service had been illegally terminated. There is nothing in cross-examination of this witness except that work of Forest Division was seasonal but the fact remained that several other co-workmen similarly situated as that of petitioner had been regularized and as such respondent could not be heard saying that petitioner was engaged as a seasonal worker. Moreover, there is no notification of govt. establishing that forest work was seasonal in nature in absence of which it is held that work of forest was not seasonal in nature. RW1 has admitted that Radha Krishan, Inder Singh had been engaged with the petitioner who has shown his inability to tell that Inder Singh and Radha Krishan were still employed in the same place who stated of his own that according to record these persons have been regularized. Thus from admission of sole witness of respondent who admitted that Inder Singh and Radha Krishan were junior to petitioner and were still in employment with the respondent clearly support plea of petitioner. As such, admission of facts qua junior co-workmen having either been retained or engaged establishes plea of petitioner that co-workmen who were junior as reflected in the seniority list Ex. PW1/B that thus respondent is held to have violated Section 25-G of the Act which is based on doctrine of 'Last come First go' which has not been adhered to while retrenching petitioner. Accordingly, it is held that service of petitioner had been illegally terminated in violation of Section 25-G of the Act.

14. Ld. Counsel for the petitioner has contended that petitioner is liable to be reinstated in service with back wages and all consequential benefits. On the other hand, ld. Dy. D.A. for respondent/State has contended that petitioner could not be reinstated in view of delay which remained unexplained. In support of contention of judgment of Hon'ble Apex titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs. 1,00,000/- only in lieu of

reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

15. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of September 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

16. In view of foregoing as petitioner did not issue notice for about 10 years after his termination in the year 1999 as the demand notice had been issued in 2009 after a period of 10 years, this court is left with no option but to hold that instead of reinstatement, compensation would be appropriate relief. In view of the above instead of awarding reinstatement, back wages, a lump-sum of Rs. 40,000/- (Rupees forty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No. 4:

17. Ld. Dy. D.A. for respondent did not press this issue and at the time of argument however from pleadings of the parties and evidence on record, claim petition being not maintainable could not be inferred as petitioner has claimed to have been illegally terminated in violation of Sections 25-F and 25-G of the Act which required issuance of notice and compensation which has been held to have not been complied by the respondent, merely because petitioner has declined the relief of reinstatement with consequential relief, it could not be stated that claim petition is not maintainable. As such, being aggrieved with the action of respondent on his illegal termination, petitioner could legitimately claimed reinstatement and other benefits as claim by him. This issue is answered in negative in favour of the petitioner and against the respondent.

Relief:

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today on this 28th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 393/2015
Date of Institution : 10-9-2015
Date of Decision : 28-07-2018

Shri Khub Ram s/o Shri Ved Ram, r/o Village Bhajnar, P.O. Jarol, Tehsil Thunag, District Mandi, H.P. ..*Petitioner.*

Versus

Divisional Forest Officer, Nachan Forest Division Gohar, Tehsil Chachiot, District Mandi, H.P. ...*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Deepak Azad, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether the industrial dispute raised by the worker Shri Khub Ram s/o Shri Ved Ram, r/o Village Bhajnar, P.O. Jarol, Tehsil Thunag, District Mandi, H.P. before the Divisional Forest Officer, Nachan Forest Division Gohar, Tehsil Chachiot, District Mandi, H.P. *vide* demand notice-nil-received on 24-01-2012 regarding his alleged illegal termination of service during December 2001 suffers from delay and laches? If not, whether termination of the services of Shri Khub Ram s/o Shri Ved Ram, r/o Village Bhajnar, P.O. Jarol, Tehsil Thunag, District Mandi, H.P. by the Divisional Forest Officer, Nachan Forest Division Gohar, Tehsil Chachiot, District Mandi, H.P. during December 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wager by respondent in the year 1997 who continued to work till March 2002 when his service had been illegally terminated for which petitioner had issued notice to respondent on 26-4-2002 who did not reinstate petitioner. It is alleged that petitioner remained under the impression that matter was pending before Labour Officer as his termination was without issuance of any notice by respondent and thereafter on 24-1-2012 petitioner had again approached his counsel at Mandi through whom he submitted demand notice to respondent qua his illegal termination. It is alleged that Smt. Kamla Devi who was junior to petitioner has been regularized and that 20 similarly situated workmen who junior to petitioner too have been regularized by respondent. It is alleged that these co-workmen had been engaged along-with the claimant who were regularized as stated above but while terminating service respondent did not follow procedure of retrenchment envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It is alleged that matter referred to Labour Commissioner Shimla had been rejected on the ground of delay and laches in pursuance to which petitioner had filed Civil Writ Petition before Hon'ble High Court of H.P. which was allowed in pursuance to which Labour Commissioner was directed to make reference before this court for adjudication. It is alleged that in claim petition delay was explained along-with certain documents as contained in notice. The petitioner further claimed that he was entitled to be reengaged in view of verdict of Hon'ble High Court in case titled as Kanta Devi *vs*. State of H.P. & Ors. in which there was delay of four years and respondents in that case had been directed to reengage with seniority. It is also claimed that act of respondent fell within the ambit of unfair labour practice as provided in Schedule Vth Clause 10 of the Act as respondent/department did not permit him to work in the year 2002 besides claimed that State Govt. had passed an order from time to time in which daily wagers had been regularized but respondent/department did not adhere to the order of State Govt. besides asserted that respondent had neither given show cause notice nor charge sheeted who was terminated from service in violation of principle of natural justice. Accordingly, relying upon the judgment of Hon'ble Apex Court titled as Central Welfare Board *vs.* Anjali Bepari (Ms) reported in 1996 (10) SCC 133 in which principle of 'Last come First go' was directed to be adhered by the employer. It is claimed that after illegal termination, petitioner was unemployed and that respondent despite having sufficient work and funds did not engage petitioner. It is claimed that petitioner had worked for more than 240 days ever since he was engaged till termination. Accordingly, petitioner prays for reinstatement as well as regularization as per norms prescribed by State Govt. of H.P. had completed 10 years of service. Accordingly, petitioner seeks his reinstatement with back wages, seniority and regularization as stated above and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager in the year 1997. It is claimed that petitioner had worked intermittently upto 2001 who did not complete 240 days in any of calendar year except the year 1998 as is evident from mandays chart. It is denied that petitioner had worked upto March 2002 and that the services of petitioner had been illegaly terminated rather from 1997 to 2001 petitioner intermittently worked and thereafter abandoned the job who never completed 240 days so as to attract applicability of Section 25-F of the Act and thus there was no necessity for issuance of any notice under Section 25-F of the Act. Admitted that petitioner had raised demand notice in 24-1-2012 and that delay in issuance of demand notice is not explained. It is denied that the case of petitioner was different of that Kamla Devi as petitioner has abandoned the job of his own sweet will whereas in case of Kamla Devi seniority and continuity in service had given by award dated 20-11-2010 of this court. It is also stated that petitioner had not disclosed names of co-workmen who have been regularized and thus the allegation is fake. It is emphatically denied that any junior had been retained or engaged by respondent and only those workers had been regularized who fulfilled regularization norms as framed by the State of H.P. Reiterating its stand that petitioner himself abandoned the job did not

require issuance of any notice under Section 25-F of the Act besides maintained that there was no violation of Section 25-G or 25-H of the Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of legal notice dated 26-4-2002, copy of judgment dated 20-6-2015 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri T.R. Dhiman, Divisional Forest Officer, Nachan Forest Division at Gohar, Mandi as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copy of Award dated 20-11-2010 Ex. RW1/C, copy of letter dated 28-11-2011 Ex. RW1/E and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-10-2017 for determination:—

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua his termination of service during December 2001 by respondent suffers from the vice of delay and laches as alleged? ..*OPP.*

(2) Whether termination of the services of petitioner by the respondent during December 2001 is/was illegal and unjustified as alleged? ..*OPP.*

(3) If issue no. 1 or issue no. 2 or both are proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

(4) Whether the claim petition is not maintainable in the present form? ..*OPR.*

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed
Issue No. 2 : Yes
Issue No. 3 : Discussed
Issue No. 4 : No
Relief. : Petition is partly allowed awarding lum-psum compensation of Rs. 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 *to* 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner and respondent being workman and employer is not in dispute. It is also not in dispute that petitioner had remained engaged from 1997 to 2001 which

corresponds to mandays chart Ex. RW1/B. To prove his case, petitioner himself has stepped into witness box as PW1, proved his affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. In his statement, petitioner has relied upon Ex. PW1/B notice dated 24-6-2002, Ex. PW1/C order dated 20-6-2015 passed in CWP No. 2997/2015. In cross-examination he has denied that he had worked intermittently with the respondent from 1997 to 2001. He has specifically denied that he worked for more than 240 days. Admitted that he had issued notice in 2012 besides admitted that Kamla Devi was engaged in pursuance to order of the court. Bare glance at the mandays chart Ex. RW1/B would establish that petitioner had worked for 139 days in the year 1997, 242 days in 1998, 243 days in 1999, 107 days in 2000 and 210 days in 2001. For the applicability of Section 25-F of the Act, it was required to be established by the petitioner that he had worked for 240 days to meet out requirement of Section 25-B of the Act prior to his termination in preceding 12 months. It is evident from mandays chart Ex. RW1/B that petitioner had worked for 210 days in the year 2001 and in 2001 he had worked for 107 days. Since above said document has been relied upon by the respondent who had not clarified specifically in its documents referred to above and particular date or month petitioner remained engaged when he allegedly abandoned the work. As per case of the respondent and also details of mandays chart *i.e.* the month & number of working days in 2001 and 2000 and by which it could be concluded with certainty that petitioner had worked but the document of respondent as stated above did reveal so and as such it can be safely said that petitioner had worked for 317 days in the year 2000 and 2001. That being so, in absence of bifurcated details of months which was required to be revealed in mandays chart referred to above, this court is left with no option but to hold that petitioner had worked for 240 days in preceding 12 months moreso when petitioner has claimed that he had worked upto March 2002 but this aspect was denied by respondent. If petitioner had worked upto March 2002 as mentioned he could not have worked for 210 days in three months *i.e.* January, February & March and duty was casted upon respondent to have specifically allege as well as proved till what time petitioner worked as period of 210 days could not have been covered in these seven months. As such, omission of respondent to lead specific evidence qua petitioner had actually worked in specific months, it is to be held that petitioner had completed 240 days as he had worked for 210 days in 2001 and working 30 days could be part of 107 days in the year 2000. That being so, it was incumbent upon the respondent to have issued notice under Section 25-F (a) (b) of the Act which has not so been done.

12. Cross-examination of RW1 Shri T.R. Dhiman, Divisional Forest Officer revealed that this witness had admitted that petitioner was not given any notice when he was disengaged and clarified by himself by stating that respondent had not disengaged rather petitioner had left the job of his own. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2001. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. There is no iota of evidence on record establishing that respondent had issued any notice when the petitioner allegedly left or abandoned the job in absence of which uncorroborated testimony could not be relied so as to hold that petitioner had abandoned job. As such, plea of respondent that petitioner abandoned the job merits rejection. In view of the above discussions, respondent is held to have violated Section 25-F of the Act.

13. With regard to violation of Section 25-G of Act dealing with procedure for retrenchment, it would be apt to mention here that pleadings in claim petition is too vague. Neither names of workmen who were junior to petitioner has been mentioned nor seniority list has been produced by which it could be established that any junior to petitioner had been retained while terminating service of petitioner. In so far Kamla Devi w/o Karam Singh, r/o Village Sharan, P.O. Bagsiad, Tehsil Chachiot, District Mandi, H.P. is concerned, she has admittedly been engaged on the basis of court order *i.e*. judgment dated 20-11-2010 in reference no. 158/2005 copy of which is Ex. RW1/C but minute scrutiny of evidence on record coupled with mandays chart Ex. RW1/E concerning Kamla Devi would show that she had been engaged on 1998 who continued work under respondent and was certainly junior and was also held to be wrongly terminated on 21-4-2001 who had been directed to be engaged in pursuance to award. If said Kamla Devi has been wrongly terminated on 21-4-2001, she was certainly terminated from service prior to petitioner who was terminated after having worked in 2001 for 210 days *i.e.* sometimes after July 2001. Accordingly, it is held that respondent had not violated Section 25-G of Act and for similar reason Section 25-H of Act is held to have not been violated.

14. Ld. counsel for the petitioner has contended that petitioner is liable to be reinstated in service with back wages and all consequential benefits. On the other hand, Ld. Dy. D.A. for respondent/State has contended that petitioner could not be reinstated in view of delay which has remained unexplained. In support of contention of judgment of Hon'ble Apex Court titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** reported in **2013 (136) FLR 893 (SC)** in which criteria to be looked into was detailed by Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs. 1,00,000/- only in lieu of reinstatement instead of reengagement of retrenched employee who had issued demand notice after about six years.

15. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of September 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

16. As such, from evidence on record, it is evident that petitioner has worked for two years in which he actually rendered service for 317 days and that petitioner is about 53 years of age and that respondent did not issue notice under Section 25-F and that demand notice had been issued after about 11 years and guidelines of Hon'ble Apex Court in its judgment 2013 (*supra*) therein, and thus in circumstances of case compensation be appropriate relief instead reinstatement since delay in giving demand notice by petitioner after more than 10 years without any justified ground would be an importance circumstance in determining amount of compensation. In view of foregoing discussion instead of awarding reinstatement, back wages, seniority and past service

benefits of petitioner a lump-sum of Rs. 1,00,000/- (Rupees one lakh only) would be appropriate relief to the petitioner. Issues no. 1, 2 and 3 are answered accordingly.

Issue No. 4:

17. Ld. Dy. D.A. for respondent did not press this issue and at the time of argument however from pleadings of the parties and evidence on record, claim petition being not maintainable could not be inferred as petitioner has claimed to have been illegally terminated in violation of Section 25-F of the Act which required prior issuance of notice and compensation which has been held to have not been complied by the respondent merely because petitioner has been declined the relief sought for, it could not be stated that claim petition is not maintainable. As such, being aggrieved with the action of respondent qua his illegal termination, petitioner could legitimately claimed reinstatement and other benefits as claimed by him. This issue is answered in negative in favour of the petitioner and against the respondent.

Relief:

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 110/2013
Date of Institution	: 06-08-2013
Date of Decision	: 30-7-2018

Shri Jeet Ram s/o Shri Kali Ram, r/o Village Bhanwar, P.O. Maloh, Tehsil Sundernagar, District Mandi, H.P. ..*Petitioner.*

Versus

The Principal, Government Polytechnic, Sundernagar, District Mandi, H.P. ..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether termination of the services of Shri Jeet Ram, s/o Shri Kali Ram, r/o Village Bhanwar, P.O. Maloh, Tehsil Sundernagar, District Mandi, H.P. by The Principal Polytechnic, Sundernagar, District Mandi, H.P. during January 2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a corrigendum dated 21st March, 2017 was received from the appropriate government which reads as under:—

"Whereas, a reference has been made to the Ld. Labour Court Dharamshala, District Kangra, H.P. *vide* notification of even No. dated 30-7-2013 for its legal adjudication. However, inadvertently the correct facts could not mentioned in the date of termination of the said notification. Therefore, the same *may be read* as **"03-02-2011"** *instead of* **"January, 2011".**

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner above named had joined as Carpenter Grade-I on 7-11-2005 on muster roll basis in pursuance to interview conducted by a committee constituted by respondent for the above said post. Averments made in the claim petition revealed that while joining on daily wage basis, no appointment letter was given and terms and conditions of appointment were not settled although petitioner continuously worked till December, 2009. It further transpires from the claim petition that service conditions of the petitioner had been changed in January, 2010 when he was engaged as Guest Trainer followed by execution of agreement between respondent and petitioner on 29-12-2009 to work as Guest Trainer *w.e.f.* 1-1-2010 for a period of six months in terms of para No. 4 of the agreement which has since been expired on 30th June, 2010. The grievance of petitioner remains that respondent did not serve one month's notice envisaged under Clause 4 of the agreement dated 29-12-2009. It further remains grievance of petitioner that he had been engaged in the month of July, 2010 without settlement of terms and conditions of muster roll as daily waged carpenter who continuously worked upto 2nd February, 2011 that his work and conduct remained satisfactory besides there was no reason for changing service conditions specifically maintained that petitioner had discharged duties in same capacity as that of the carpenter during period he has been re-designated as guest trainer. It further remains the case of the petitioner that while respondent entered into agreement with petitioner *w.e.f.* January, 2010 to June, 2010 so as to deprive him of protection envisaged under Section 25-F of the Act (hereinafter called the 'Act' for brevity) besides petitioner had no knowledge regarding the agreement/contract which was not covered under Section 2 (oo)(bb) of the Act. It is alleged that in pursuance to engagement on contract basis, respondent had received budgetary allocation from Central Government when he was engaged on consolidated salary of Rs. 6,000/- per month. It is

alleged that Sawaru Ram, Rajesh Kumar & Narinder Kumar were working with the petitioner on contract basis in pursuance to agreement dated 29-12-2009 on various posts who were getting salary of Rs. 6,000/- per month like petitioner and these workmen continued to work on daily wages basis without any further contract and their service had been regularized by the Director Technical Education Vocation and Industrial Training Institute, Himachal Pradesh *vide* office order No. 881 dated 5-8-2013. It is further claimed that on 3-2-2011 service of petitioner had been illegally terminated without serving any show cause notice or charge-sheet in violation of provisions of Section 25-F (a) & (b) of the Act although petitioner had completed 240 days in each calendar year and in particular preceding 12 months from the date of termination as stated above. It is alleged that neither notice nor compensation had been paid by the respondent. As such, action of respondent in terminating service of petitioner is illegal, avoid ab-initio and against principle of natural justice. It is alleged that petitioner had obtained information under RTI Act which revealed that termination had been done due to non-availability of work and funds and as such service of petitioner automatically discontinued. It is further alleged that one Narotam Ram who was working as chowkidar on regular basis had been promoted by Director Technical Education Vocation and Industrial Training Institute, H.P. Sundernagar *vide* office order No. 294 dated 21-4-2007 as carpenter in pay scale of Rs. 3120—5160 besides mentioned that respondent has been recoursing to unfair labour practice as his service conditions had been changed from daily wager to contract and again engaged petitioner on daily wage besides which in violation of Clause 10 of Fifth Schedule of the Act. Accordingly, petitioner prays for quashing of illegal order dated 3-2-2011 of termination of petitioner directing respondent to reinstate petitioner in service with full back wages, seniority and in continuity service besides petitioner be also extended similar benefits as granted to Swaru Ram, Rajesh Kumar and Narinder Kumar in the pay scale of Rs. 5910-20200/- with all difference of arrears along-with interest @ 12% besides litigation cost and to any other relief petitioner is found entitled.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, cause of action, estoppel, petition being bad on account of delay and laches. It is admitted that petitioner had been engaged on daily waged basis as carpenter in the month of November, 2005 who was not issued any appointment letter without settling of terms and conditions of employment. It is alleged that petitioner was engaged on 7th November, 2005 on muster roll on day to day basis for repair and maintenance of residential and non-residential buildings of institute as per requirement and availability of funds. It is admitted that petitioner had been engaged as "guest trainer" on the basis of agreement dated 29-12-2009 for a period of six months besides asserted that there was no work and funds available with the respondent in the month of December, 2009 which was brought to knowledge of the petitioner notifying him that his service were liable to be terminated with due process of law after fulfilling codal formalities for want of work and funds when petitioner replied that explaining great hardship which he would face for which he had written letter dated 24-12-2009 for adjusting petitioner in some other project or scheme and thereafter petitioner was accommodated in Centrally Sponsored Non-Budgeted Scheme/Project funded by Ministry of Human Resources Development, Govt. of India presently known as CDTP for which he executed agreement dated 29-1-2009 and as per the terms and conditions enumerated therein was engaged on monthly consolidated salary of Rs/. 6000/- per month and as such there was no necessity of issuance of one month's notice. Admitted that petitioner had worked till July, 2010 on daily wage carpenter however denied that petitioner has been designated by respondent as guest trainer as claimed by him. It is asserted that no work and funds were available with the respondent after February, 2011 and for said reason could not continue despite hardship highlighted in his letter dated 24-12-2009. It has been emphatically denied that respondent had recoursed to unfair labour practice besides maintained that petitioner was gainfully employed as private carpenter who also worked as an agriculturist. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy of agreement dated 29-12-2009 Ex. PW1/B, copy of agreement of Rajesh Kumar Ex. PW1/C, copy of agreement of Narinder Kumar Ex. PW1/D, copy of office order dated 5-8-2013 Ex. PW1/E. The petitioner examined one Shri Naresh Kumar s/o Sh. Pyar Chand, presently posted as Labour Inspector Sundernagar, District Mandi as PW2, tendered/proved copy of demand notice dated 13-5-2011 Ex. PW2/A, copy of reply to demand notice dated 20-9-2011 Ex. PW2/B, copy of mandays chart Ex. PW2/C, copy of failure report under Section 12 (4) Ex. PW2/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 R.K. Sharma, Principal Govt. Polytechnic Sundernagar, District Mandi, H.P. as RW1, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of letter dated 24-12-2009 Ex. RW1/C, copy of letter dated 29-12-2009 Ex. RW1/D, copy of agreement Ex. RW1/E, copy of norms and guidelines (community scheme) Ex. RW1/F, copy of office order dated 21-4-2007 Ex. RW1/G, copy of Rajpatra Ex. RW1/H. Shri Sanjeev Singh Rana, Dy. D.A. has examined himself as RW-2 and tendered/proved copy of bill voucher of Jeet Ram (petitioner) Ex. RA and closed evidence.

8. I have heard the Ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

9. From the contentions raised, following issues were framed by my Ld. predecessor on 3-4-2014 for determination:—

(1) Whether the termination of the services of the petitioner by the respondent during the month of January, 2011 is/was illegal and unjustified as alleged? ..*OPP.*

(2) Whether the petitioner has a cause of action? ..*OPP.*

(3) Whether the petition is not maintainable in the present form? ..*OPR.*

(4) Whether the petitioner has suppressed the true and material facts from the court as alleged. If so, its effect? ..*OPR.*

(5) Whether the petitioner is estopped from filing the present claim petition by his act and conduct as alleged. If so, its effect? ..*OPR.*

(6) Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief

10. It is pertinent to mention here that *vide* corrigendum dated 21st March, 2017 received from the appropriate govt. revealed that date of termination of petitioner was rectified by stipulating date as 3-2-2011 instead of January, 2011. Thereafter, on 26-6-2018, this court had recasted issue No. 1 which is read as under along-with issues already framed on 3-4-2014:—

(1) Whether the termination of services of petitioner by the respondent *w.e.f.* 03-02-2011 is/was legal and justified as alleged? ..*OPP.*

11. It is further pertinent to mention here that after recasting of issue No. 1, both the parties had not been led any additional evidence on recasted issue No. 1 *vide* their separate statements on record.

12. For the reasons toe be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief	: Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 *and* 2:

13. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

14. Factum of petitioner having been engaged as Carpenter from 1-11-2005 to 2-2-2011 by respondent is not in dispute. Admittedly, terms and conditions of employment of petitioner were not settled by respondent at the time of initial engagement of petitioner on muster roll basis on 1-11-2005 till his service was terminated on 3-11-2011. Chronology of details of appointment/engagement of petitioner as reflected in mandays chart Ex. RW1/B reveal that for the first time petitioner had been engaged as carpenter on daily wage basis on muster *w.e.f.* 1-11-2005 to 31-8-2008 for a period of two years and ten months and thereafter he was shifted to minor civil work as carpenter for a period of one year four months on bill basis from 1-9-2008 to 28-12-2009. On expiry of engagement on 28-12-2009, petitioner was continued to be engaged to work under CDTP from 29-12-2009 to 30-6-2010 for a period of six months and 3 days on similar assignment. Thereafter, petitioner continued to work from 1-7-2010 to 2-2-2011 for a period of seven months and 2 days under minor civil work and that service of petitioner was finally terminated on 3-2-2011. The plea of respondent on the other hand remained that petitioner *vide* his letter dated 24-12-2010 Ex. RX had consented to work under CDTP and for said reason, petitioner was again engaged after 28-12-2009 who was at that time working for minor civil work of daily wage basis and thereafter he continued to work under CDTP till 30-6-2010. It is again absolutely uncertain from plea raised by the respondent as to how the petitioner was shifted to minor civil work basis from 1-7-2010 till 31-2-2011 working as guest trainer on CDTP but certainly working as carpenter but attitude of respondent in changing service conditions clearly show that being the employer, respondent was recoursing to unfair labour practice by changing service conditions under the garb of consent letter Ex. RX dated 24-12-2009 which postulated engagement of petitioner as guest trainer. In any case, petitioner continued to work as carpenter while working under the different schemes but there is no explanation from the side of respondent as to how he remained working under different schemes or under minor civil work on daily basis as he had been engaged initially as carpenter on muster roll basis. The falsity of respondent's case gets surfaced from reply dated 21-9-2011 Ex. PW2/B addressed to Conciliation Officer in pursuance to demand notice dated 13-5-2011 Ex. PW2/A of petitioner as in para No. 5 demand notice, petitioner has alleged change in service conditions and violation of Section 9-A of the Industrial Disputes Act besides maintained that he continued to work as carpenter in same manner as was doing while being engaged on muster roll since his initial engagement but in reply, nothing has been stated about change of service condition or the same has not been denied which manifestly showed that respondent was working in whimsical manner contrary to provisions of Act and while terminating service of petitioner did not recourse to lawful procedure and therefore change of designation or by changing muster roll to wage bill basis clearly establish change in service conditions under Section 9-A of

Act, falsifying plea of respondent *qua* non-availability of work and funds. In the year 2005, petitioner was initially engaged on 1-11-2005 and had completed more than 374 days as on 31-12-2006. It is admittedly not the case of the respondent that petitioner was disengaged after 31st December, 2006 rather he was continuously working as carpenter thereafter since 1-1-2007 on muster roll basis. The case of the respondent also remains that subject to work and funds, the petitioner could be engaged. It is also pertinent to refer to demand notice Ex. PW2/A dated 13-5-2011 which not only highlighted violation of provisions of Section 25-F of the Act but also changing service condition of the petitioner without complying procedure envisaged under Section 9-A of the Act. Since the petitioner was appointed on contract basis on 29-12-2009 to 28-6-2010 and after completion of the said period again re-engaged in the capacity of carpenter grade-I which *prima facie* highlights manner in which unfair labour practice was recoursed to by respondent in terminating service of petitioner on 3-9-2011 without any notice under Section 25-F of the Act or wages in lieu thereof moreso when there is ample evidence on record establishing completion of working of 240 days by petitioner in preceding 12 months prior to his termination besides engaging Narotam Ram, Chowkidar as regular carpenter who was admittedly working as Chowkidar for several years prior to his promotion as carpenter. Be it stated that demand notice Ex. PW1/B so issued by petitioner was replied by respondent which was addressed to Conciliation Officer. In para No. 3 of the reply, it was alleged that petitioner was assigned work as per requirement and availability of work under schemes/project work and not for entire calendar year. It was also stated that as per norms and guidelines of CDTP, affidavit of petitioner was obtained whose engagement was purely on contract basis for the project approved besides remuneration was being paid to petitioner as per norms and guidelines of CDTP schemes and after completion of course, service of said Jeet Ram (petitioner) automatically came to end and was thus not terminated.

15. PW1 petitioner in the witness box has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in claim petition. In cross-examination he has specifically admitted having written letter Ex. RX dated 24-12-2009 to respondent besides admitted that in pursuance to said letter, petitioner entered into agreement to work as carpenter for several months as stated therein which came to an end after six months. He has further admitted that from July, 2010, he was again engaged on daily wage basis as carpenter where he worked till February, 2011 besides that admitted manadays chart Ex. RW1/B was correct and that he had entered into agreement with the respondent besides stated of his own that agreement had been entered into between respondent and several others who were engaged. PW2 Shri Naresh Kumar s/o Sh. Pyar Chand presently posted as Labour Inspector, Sundernagar, proved copy of demand notice Ex. PW2/A which was replied *vide* Ex. PW2/B and admitted that in failure report termination of petitioner was mentioned 3rd February, 2011.

16. Repudiating the evidence led by the petitioner, respondent Shri R.K. Sharma, Principal Govt. Polytechnic Sundernagar has stepped into witness box as RW1 sworn in affidavit Ex. RW1/A. Cross-examination of respondent reveals that petitioner had not been issued any appointment letter although admitted that petitioner worked till December, 2009 and stated of his own that petitioner had been given breaks in between besides admitted that petitioner has been engaged on contractual basis from 1-7-2010 to 30-6-2010 under CDTP scheme and that Rajesh Kumar, Narinder Kumar, Swaru Ram, Chaman Lal, Pawan etc. had been engaged as trainer besides maintained that petitioner was engaged from 1-7-2010 till February, 2011 on bills basis. He has clarified that during this period, no contract was entered into instead he was engaged on bill basis. Further admitted that petitioner had worked for more than 240 days and that no notice was served upon petitioner while terminating his service besides petitioner was not paid compensation. He has admitted that Rajesh Kumar, Narinder Kumar, Swaru Ram, Chaman Lal, Pawan etc. have been regularized as these posts were vacant and one Narotam Ram who was working as chowkidar had been appointed as carpenter. From oral evidence on record coupled with documentary evidence as referred to above, it is abundantly clear that petitioner continued to work as carpenter from his

initial date of engagement till he was terminated. It is manifest from testimony of RW1 that petitioner had been shifted from one place to other but respondent continued to be employer while payments of wages were being made from different heads. It has been admitted by respondent that petitioner had worked for 240 days and that no notice was served upon him as required under Section 25-F of the Act or any wages in lieu thereof was paid.

17. To appreciate correctness of statement so made by respondent (RW1), it would be relevant to go through mandays chart Ex. RW1/B which shows that petitioner had worked for 40 days in 2005, 334 days in 2006, 333 days in 2007, 238 days in 2008, 282 days in 2009 and 318 days in the years 2010 & 2011. It can be safely concluded from the mandays chart that petitioner had worked for more than 240 days in preceding 12 months from date of his termination on 3-2-2011. Since RW1 being sole witness admitted to have not issued notice under Section 25-F of the Act which necessarily establishes violation of mandatory provisions of Section 25-F of the Act entitling petitioner for reinstatement of service.

18. In so far as allegation of change in service conditions envisaged under Section 9-A of the Act is concerned, suffice would be to state here that petitioner had either worked as carpenter or as a guest trainer under respondent initially for a period of 2 years & 10 months on muster roll basis and thereafter under bill basis for minor civil work or under CDTP as stated above but the fact remains that petitioner had been engaged by respondent only to work of carpenter and wages too were paid by respondent. It has rightly been contended by Ld. Counsel for petitioner that petitioner had continuously work as carpenter and respondent arbitrarily kept changing his service conditions and that petitioner had no option but to work at the whims of respondent whose service conditions were arbitrarily changed falling within the ambit of unfair labour practice. In so far as allegation of entering into agreement with the petitioner dated 29-12-2009 Ex. RW1/D is concerned, the same would not eclipse the claim of petitioner *qua* his illegal termination regardless of the fact that he had written letter Ex. RX dated 24-12-2009 to respondent as petitioner had been engaged first of all on muster roll for 2 years 10 months and thereafter changes in service conditions had been made. Even if the petitioner had consented to be guest trainer for carpentry work for furniture making, the same would not take away his legal rights for remaining engaged on muster roll basis as before and if changes had been made such as such act of the respondent *prima facie* attracts recoursing to unfair labour practice.

19. Ld. Dy. D.A. for the respondent had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract before alleged termination and thus he stands excluded from definition of 'retrenchment' and therefore respondent was not required to adhere to provisions of Section 25-F of the 'Act' while disengaging or terminating service of petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Dy. D.A. for respondent placing reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar** Vs**. H.R.T.C. and Anr.** reported in **2007 LLR 1155. I**n the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination from retrenchment.** In the case before the Hon'ble High Court respondent had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 which reproduced below for reference:—

> "….12. The Division Bench of Allahabad High Court has held in Shailendra Nath V*v.* Vice-Chancellor, Allahabad University, 1987 Lab IC 1607 that section 2(oo) (bb) is in the

nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:—

"The expression, **'termination for whatsoever reason' used in Cl. (oo)** came up for interpretation before the Supreme Court in State Bank of India *Vs.* N.S. Money, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to **mean a termination which takes place either by active step of employer or by running out of stipulated period.** The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced'**. Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub-cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide**. An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was *bona fide.* It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See H.D. Singh *Vs*. Reserve Bank of India. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker**…."

Para No.17 of the aforestated judgment is also reproduced below which has bearing on merits of issue and is reproduced below:—

"17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited *Vs*. Mamni, (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947……."

20. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke** Vs**. Zila Parishad Yavatmal,** reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India** Vs. **N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub Clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. The **benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and *even to casual labourers who were engaged merely to complete casual nature of work*.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service** vis-à-vis **the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court respondent had adopted unfair labour practice means "to change service conditions" of the petitioner who was initially engaged on muster rolls and later controverted to wage bill despite this fact that petitioner had worked for more than 374 days and while terminating petitioner was made to work on contract basis under different schemes and on wage bill basis despite the fact that petitioner was on muster roll who had secure rights by virtue of his engagement. Ex. RA is the wage bill for the month February, 2011 of Jeet Ram (petitioner) who was paid Rs. 306/- for having worked for first two days of February as also reflected in mandays chart when petitioner was terminated despite the fact that petitioner had been continuously working ever since 1-11-2005. Ld. Authorized Representative for petitioner has vehemently argued that respondent had recoursed to unfair labour practice in terminating service of petitioner under the garb of working on bill basis for minor civil work. It is pointed out that while working under respondent and submitting letter Ex. RX dated 24-12-2009 to work under CDTP clearly shows that petitioner was not in bargaining position as he was paid for the wages and was continuously working since 1-11-2005 under respondent. Be it stated that there is no explanation from side of respondent as to how petitioner was shifted from muster roll basis on 1-1-2007 for the first time which is not permissible under the Act. As such, the changes made in terms and conditions manifestly established unfair labour practice by respondent as has rightly been submitted by Ld. Authorized Representative for petitioner.

21. It is evident from evidence on record that persons namely Rajesh Kumar, Narinder Kumar, Swaru Ram, Chaman Lal, Pawan etc. have been regularized in service who had worked on similar conditions with that of petitioner after executing contract. No explanation has come from the side of RW1 as to how petitioner who executed contract like other co-workmen stated above was not regularized or say excluded from regularization. Similarly, Ex. RW1/G dated 21-4-2007 office order showing unprecedent manner of promotion as Narotam Ram *vide* office order working as chowkidar was promoted to the post of carpenter. If a workman had substantial years of service as chowkidar how could he be promoted which apparently shows violation of Act. It is not

understood as to how a person working on post of chowkidar for several years could be regularized for the post of carpenter when petitioner was available who worked as carpenter Grade-I since 7-11-2005 as has come in evidence who could be promoted on basis of experience of carpenter in the year 2007 when Narotam Ram Chowkidar was promoted and such act on the part of the respondent clearly shows that respondent had been working whimsically in violation of mandatory provisions of Act and thus invading the rights of petitioner recoursing to unfair labour practice for reason stated in foregoing para.

22. In so far as allegation of petitioner having not remained gainfully employed, Ld. Authorized Representative for petitioner has taken me through cross-examination in which PW1 the petitioner has denied that he had any cultivable land. He has also denied that he worked as carpenter or had taken up private work. Onus to prove that petitioner was gainfully employed was upon respondent but RW1 while stepping into witness box has merely asserted that petitioner was working as private carpenter and had agricultural land but as stated above petitioner has denied that he had earned his livelihood through agricultural pursuits or from work of carpenter . However, being a carpenter, he could have livelihood through his profession of carpentry but onus lied upon the respondent however RW1 in cross-examination has shown his inability to tell if petitioner was engaged in professional work of carpenter by which he could have livelihood but being contesting respondent as RW1 he was to deny on aspect of petitioner having been not gainfully employed and showing ignorance by RW1 on this aspect has to be interpreted against plea of respondent as being sole contesting respondent. RW1 was to specifically deny material question as stated above and it is held that petitioner was not gainfully employed after his termination however in peculiar circumstances petitioner who is skilled workman having not experience of carpentry would not have sit idle, can be safely awarded 50% back wages from date of termination. As such, respondent having failed to discharge onus of proof *qua* petitioner having remained gainfully employed has to be interpreted in favour of petitioner. In view of above discussions, respondent is held to have violated provisions of Sections 25-F of the Act. Issue No.1 decided in faovur of petitioner and against respondent holding that petitioner had violated provisions of Section 25-F as well as provisions of Section 9- A of the Act and for said reasons, issue No. 2 is to be answered in affirmative in favour of petitioner. Both the issues are thus answered in favour of petitioner and against respondent.

Issue No. 3:

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 6:

24. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another** Vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon

the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram** Vs**. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand** Vs. **Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager** vs. **Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd.** Vs**. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh** Vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

25. No material has been placed on record by the respondent to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Thus issue No.6 is decided against the respondent and in favour of petitioner.

Issues no. 3, 4 *&* 5:

26. All these issues were not pressed by Ld. Counsel for respondent at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

Relief:

27. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **along with 50% back wages.** However, petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of July, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

In the Court of Deepti Mandhotra HPAS, Sub-Divisional Magistrate Chamba, District Chamba (H. P.)

Kishore Kumar s/o Sh. Chamaru Ram, Village Chhol, P.O. Sahoo, Tehsil & District Chamba, H. P., aged 23 years (Bridegroom/Husband).

and

Asha d/o Shri Kuldeep, Village Kaihmali, P.O. Uteep, Tehsil & Distt. Chamba, H.P., aged 26 years (Bride/Wife) . .*Applicants*.

Versus

1. The General Public

2. The Registrar of Marriage, Himachal Pradesh, Shimla

Subject.— Registration of Marriage under Section 8(4) of the H.P. Registration of Marriage Act, 1996 (Act No. 21of 1997).

Whereas, the above named applicants have made an application before me under section 8(4) of H.P. Registration of Marriage Act, 1996 alongwith relevant record and affidavits stating therein that they have solemnized their marriage on dated 15-01-2018 at their place of residence with Hindu rites and customs but due to some un-avoidable circumstances it could not be entered in the records of Gram Panchayat Sahoo, Development Block Chamba, well in time;

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the registrar of marriage and now, therefore, necessary order for the registration of their marriage be passed, so that their marriage could be registered by the concerned authority.

Now, therefore, objections are invited from the general public that if, anyone has nay objection regarding the registration of marriage of above named applicants, they should appear

before the undersigned in my court on or before 10-05-2019 either personally or through their authorised agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 4th April, 2019

Seal.

DEEPTI MANDHOTRA HPAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

In the Court of Deepti Mandhotra HPAS, Sub-Divisional Magistrate, Chamba, District Chamba (H. P.)

Kishan Singh s/o Sh. Hardyal, Village and P.O. Palyur, Tehsil & District Chamba, H. P., aged 72 years (Husband).

and

Sumitra d/o Shri Jaram Singh, Village Gohand, P.O. Kandla, Tehsil & Distt. Chamba, H.P. aged 52 years (Wife) . . *Applicants.*

Versus

1. The General Public
2. The Registrar of Marriages, Himachal Pradesh, Shimla

Subject.— Registration of Marriage under section 16 of Special Marriage Act, 1954.

Whereas, the above named applicants have made an application before the undersigned under section 15 & 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) alongwith affidavits and other relevant documents stating therein that they have solemnized their marriage on dated 27-02-2014 at their place of residence and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Now, therefore, the general public is hereby informed through this notice that any person who has any objection regarding the registration of this marriage can file the objections personally or in writing before this court on or before 06-05-2019 after that no objection will be entertained and marriage will be registered accordingly.

Issued under my hand and seal of the Court on this 30th March, 2019.

Seal.

DEEPTI MANDHOTRA HPAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

In the Court of Deepti Mandhotra HPAS, Sub-Divisional Magistrate Chamba, District Chamba (H. P.)

Taswinder Singh s/o Sh. Narender Singh, r/o Mohalla Kasakada, Chamba Town, Tehsil & District Chamba, H. P., aged 28 years (Bridegroom/ Husband).

and

Archana Bedi d/o Shri Nand Kishore Bedi, r/o Mohalla Sapri, Chamba Town, Tehsil & District Chamba, H. P., aged 24 years (Bridegroom/ Wife) . . *Applicants.*

Versus

1. The General Public
2. The Registrar of Marriage, Himachal Pradesh, Shimla

Subject.— Registration of Marriage under Section 8(4) of the H.P. Registration of Marriage Act, 1996 (Act No. 21of 1997).

Whereas, the above named applicants have made an application before me under section 8(4) of H.P. Registration of Marriage Act, 1996 alongwith relevant record and affidavits stating therein that they have solemnized their marriage on dated 12-11-2017 at their place of residence with Hindu rites and customs but due to some un-avoidable circumstances it could not be entered in the records of Municipal Council Chamba, Tehsil & Distt. Chamba, H.P. well in time;

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the registrar of marriage and now, therefore, necessary order for the registration of their marriage be passed, so that their marriage could be registered by the concerned authority.

Now, therefore, objections are invited from the general public that if, anyone has nay objection regarding the registration of marriage of above named applicants, they should appear before the undersigned in my court on or before 06-05-2019 either personally or through their authorised agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 31st March, 2019

Seal.

DEEPTI MANDHOTRA HPAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

In the court of Dr. Murari Lal, Marriage Officer-cum-**Sub-Divisional Magistrate, Dalhousie**

In the matter of :

1. Shri Vishal son of Shri Madan Lal, resident of Village Rohla, P.O. Dalhousie Cantt, Tehsil Dalhousie, District Chamba (H.P.) Age 29 years.

2. Babita Kumari d/o Shri Onkar Singh, r/o Ward No. 4 Badehar, P.O. Patti, Tehsil Palampur, District Kangra (H. P.) Age 28 years . . *Applicants.*

Versus

General Public

Subject.—Application for the registration of Marriage under section 16 of the Special Marriage Act, 1954.

Shri Vishal and Babita Kumari have filed an application alongwith an affidavit in the court of undersigned under section 16 of the Special Marriage Act, 1954 stating that they have solemnized their marriage on 09-03-2019 and that they have been living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding the registration of this marriage can file an objection personally or in writing before this court on or before 01-05-2019. After that no objection will be entertained and marriage will be registered.

Seal.

MURARI LAL,
Marriage Officer-cum-*Sub Divisional Magistrate,*
Dalhousie, District Chamba (H.P.).

In the court of Dr. Murari Lal, Marriage Officer-cum-**Sub-Divisional Magistrate, Dalhousie**

In the matter of :

1. Shri Ajay Kumar son of Shri Kunj Ram, resident of Village Sangrain, P.O. Tritha, Tehsil Dalhousie, District Chamba (H.P.) Age 25 years.

2. Sunanda d/o Shri Jodh Singh, r/o Mamal, P.O. Ghatasani, Tehsil Bhattiyat, District Chamba (H. P.) Age 22 years . . *Applicants.*

Versus

General Public

Subject.—Application for the registration of Marriage under section 16 of the Special Marriage Act, 1954.

Shri Ajay Kumar and Sunanda have filed an application alongwith an affidavit in the court of undersigned under section 16 of the Special Marriage Act, 1954 stating that they have solemnized their marriage on 23-02-2019 and that they have been living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding the registration of this marriage can file an objection personally or in writing before this court on or before 01-05-2019. After that no objection will be entertained and marriage will be registered.

Seal.

MURARI LAL,
Marriage Officer-cum-*Sub Divisional Magistrate,*
Dalhousie, District Chamba (H.P.).

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 ना0 तह0 रीडर / 2019 / 1231 तारीख दायरा : 01–04–2019

मान सिंह पुत्र मोती, गांव शगलोठ, महाल कुठेहड, परगना खडोट, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश . . वादी।

बनाम

आम जनता . . प्रतिवादी।

विषय.–– राजस्व कागजात माल में नाम दरुस्ती करने बारे प्रार्थना–पत्र।

मान सिंह पुत्र मोती, गांव शगलोठ, महाल कुठेहड, परगना खडोट, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश ने इस कार्यालय में आवेदन–पत्र व ब्यान हल्फी दिया है कि मेरा नाम शिक्षा प्रमाण–पत्र, परिवार रजिस्टर नकल में मान सिंह दर्ज है जो सही व दरुस्त है परन्तु पटवार वृत्त झुलाडा के राजस्व अभिलेख में मेरा नाम मानों दर्ज हुआ है जोकि गलत है तथा आवेदन किया है कि मेरा नाम पटवार वृत्त झुलाडा के महाल कुठेहड के राजस्व अभिलेख में मानों उर्फ मान सिंह दर्ज करने के आदेश जारी किये जायें।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि मानों उर्फ मान सिंह का नाम पटवार वृत्त झुलाडा के राजस्व अभिलेख में दरुस्त किया जाना है इस बारे में आम जनता को कोई आपत्ति हो तो इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर इस सम्बन्ध में अपना उजर / एतराज पेश कर सकते हैं, इसके पश्चात कोई भी उजर / एतराज मान्य नहीं होगा तथा उपरोक्त मानों उर्फ मान सिंह का नाम दरुस्त करने के आदेश पारित कर दिये जाएंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 01–04–2019 को जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
उप–तहसील पुखरी, जिला चम्बा, हि0 प्र0।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 ना0 तह0 रीडर / 2019 / 1238 तारीख दायरा : 21–02–2019

चमन लाल पुत्र ज्ञान चन्द, गांव फाटी, पंचायत भनोता, परगना उदयपुर, तहसील व जिला चम्बा, हिमाचल प्रदेश . . वादी।

बनाम

आम जनता . . प्रतिवादी।

विषय.–– राजस्व कागजात माल में नाम दरुस्ती करने बारे प्रार्थना–पत्र।

चमन लाल पुत्र ज्ञान चन्द, गांव फाटी, पंचायत भनोता, परगना उदयपुर, तहसील व जिला चम्बा, हिमाचल प्रदेश ने इस कार्यालय में आवेदन–पत्र व ब्यान हल्फी दिया है कि मेरा नाम आधार कार्ड, परिवार रजिस्टर नकल, राशन कार्ड व बी0 पी0 एल0, प्रमाण–पत्र में चमन लाल दर्ज है जो सही व दरुस्त है परन्तु

पटवार वृत्त टिकरी के राजस्व अभिलेख में मेरा नाम चमन सिंह दर्ज हुआ है जोकि गलत है तथा आवेदन किया है कि मेरा नाम पटवार वृत्त टिकरी के महाल टिकरी के राजस्व अभिलेख में चमन सिंह उर्फ चमन लाल दर्ज करने के आदेश जारी किये जायें।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि चमन सिंह उर्फ चमन लाल का नाम पटवार वृत्त टिकरी के राजस्व अभिलेख में दरुस्त किया जाना है इस बारे में आम जनता को कोई आपत्ति हो तो इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर इस सम्बन्ध में अपना उजर/एतराज पेश कर सकते हैं, इसके पश्चात कोई भी उजर/एतराज मान्य नहीं होगा तथा उपरोक्त चमन सिंह उर्फ चमन लाल का नाम दरुस्त करने के आदेश पारित कर दिये जाएंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 27–03–2019 को जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
उप–तहसील पुखरी, जिला चम्बा, हि0 प्र0।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 : 5 ना0 तह0 रीडर/2019/1239 तारीख दायरा : 09–01–2019

लक्ष्मी धर पुत्र माधो राम, गांव जखडूंई, डाकघर पुखरी, परगना धुन्धी, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश . . वादी।

बनाम

आम जनता . . प्रतिवादी।

विषय.–– राजस्व कागजात माल में नाम दरुस्ती करने बारे प्रार्थना–पत्र।

लक्ष्मी धर पुत्र माधो राम, गांव जखडूंई, डाकघर पुखरी, परगना धुन्धी, उप–तहसील पुखरी, जिला चम्बा, हिमाचल प्रदेश ने इस कार्यालय में आवेदन–पत्र व ब्यान हल्फी दिया है कि मेरा व मेरे पिता का नाम आधार कार्ड, परिवार रजिस्टर नकल, राशन कार्ड में लक्ष्मी धर पुत्र माधो राम दर्ज है जो सही व दरुस्त है परन्तु पटवार वृत्त टिकरी के राजस्व अभिलेख में मेरा व मेरे पिता का नाम लच्दीधर पुत्र माधो दर्ज हुआ है जोकि गलत है तथा आवेदन किया है कि मेरा व मेरे पिता का नाम पटवार वृत्त टिकरी के महाल टिकरी के राजस्व अभिलेख में लच्दीधर उर्फ लक्ष्मी धर पुत्र माधो राम दर्ज करने के आदेश जारी किये जायें।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि लच्दीधर उर्फ लक्ष्मी धर पुत्र माधो राम का नाम पटवार वृत्त टिकरी के राजस्व अभिलेख में दरुस्त किया जाना है इस बारे में आम जनता को कोई आपत्ति हो तो इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर इस सम्बन्ध में अपना उजर/एतराज पेश कर सकते हैं, इसके पश्चात कोई भी उजर/एतराज मान्य नहीं होगा तथा उपरोक्त लच्दीधर उर्फ लक्ष्मी धर पुत्र माधो राम का नाम दरुस्त करने के आदेश पारित कर दिये जाएंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 27–03–2019 को जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
उप–तहसील पुखरी, जिला चम्बा, हि0 प्र0।

ब अदालत अतिरिक्त रजिस्ट्रार विवाह एवं उप–मण्डल दण्डाधिकारी, चुराह, जिला चम्बा, हिमाचल प्रदेश

1. श्री योग राज पुत्र श्री सोहन लाल, निवासी गांव संगोरी, डाकघर डुगली, तहसील चुराह, जिला चम्बा, हि0 प्र0।

2. निर्मला वोटे पुत्री श्री तल बहादुर वोटे, निवासी वार्ड नं0 3 रामपुर, डाकघर रामपुर, तहसील रामपुर, जिला रामपुर (स्टेट पालपा–नेपाल)।

बनाम

आम जनता सचिव, ग्राम पंचायत चोली, विकास खण्ड तीसा, तहसील चुराह, जिला चम्बा, हि0प्र0।

विषय.––विवाह पंजीकरण करने बारा।

इस अदालत में श्री योग राज पुत्र श्री सोहन लाल, निवासी गांव संगोरी, डाकघर डुगली, तहसील चुराह, जिला चम्बा, हि0 प्र0 व निर्मला वोटे पुत्री श्री तल बहादुर वोटे, निवासी वार्ड नं0 3 रामपुर, डाकघर रामपुर, तहसील रामपुर, जिला रामपुर (स्टेट पालपा–नेपाल) ने एक प्रार्थना–पत्र विवाह पंजीकृत करने बारा प्रेषित किया है जिसमें अनुरोध किया है कि उन्होंने दिनांक 14–12–2018 को शादी कर ली है और तब से बतौर पति–पत्नी रह रहे हैं।

अतः सर्वसाधारण को सूचित किया जाता है कि इनके विवाह पंजीकरण बारा अगर किसी को किसी प्रकार की आपत्ति हो तो इस अदालत में इश्तहार के प्रकाशन के एक माह के अन्दर–अन्दर सुबह 10.00 बजे से सायं 5.00 बजे तक दर्ज करवा सकता है। निर्धारित अवधि में आपत्ति न आने पर विवाह को पंजीकृत करने के आदेश सम्बन्धित स्थानीय रजिस्ट्रार विवाह, ग्राम पंचायत चोली, विकास खण्ड तीसा, तहसील चुराह को पारित कर दिए जायेंगे।

आज दिनांक ..... को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर। हेम चन्द वर्मा (हि0प्र0से0),
अतिरिक्त रजिस्ट्रार विवाह एवं उप–मण्डल दण्डाधिकारी,
चुराह, जिला चम्बा, हि0 प्र0।

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ब अदालत अतिरिक्त रजिस्ट्रार विवाह एवं उप–मण्डल दण्डाधिकारी, चुराह, जिला चम्बा, हिमाचल प्रदेश

1. श्री लतीफ मुहम्मद पुत्र श्री नूर मुहम्मद, निवासी गांव टटरोग, डाकघर खुशनगरी, तहसील चुराह, जिला चम्बा, हि0 प्र0।

2. गगनदीप कौर पुत्री श्री हर चरन सिंह, निवासी समराला चौक, ताजपुर रोड, विश्वकर्म नगर, गली नं0 4, लुधियाना (पंजाब)।

बनाम

आम जनता एवं सचिव, ग्राम पंचायत खुशनगरी, तहसील चुराह, जिला चम्बा, हि0प्र0।

विषय.––विवाह पंजीकरण करने बारा।

इस अदालत में श्री लतीफ मुहम्मद पुत्र श्री नूर मुहम्मद, निवासी गांव टटरोग, डाकघर खुशनगरी, तहसील चुराह, जिला चम्बा, हि0 प्र0 व गगनदीप कौर पुत्री श्री हर चरन सिंह, निवासी समराला चौक, ताजपुर रोड, विश्वकर्म नगर, गली नं0 4, लुधियाना (पंजाब) ने एक प्रार्थना–पत्र विवाह पंजीकृत करने बारा प्रेषित किया है जिसमें अनुरोध किया है कि उन्होंने दिनांक 15–05–2018 को शादी कर ली है और तब से बतौर पति–पत्नी रह रहे हैं।

अतः सर्वसाधारण को सूचित किया जाता है कि इनके विवाह पंजीकरण बारा अगर किसी को किसी प्रकार की आपत्ति हो तो इस अदालत में इश्तहार के प्रकाशन के एक माह के अन्दर–अन्दर सुबह 10.00 बजे से सायं 5.00 बजे तक दर्ज करवा सकता है। निर्धारित अवधि में आपत्ति न आने पर विवाह को पंजीकृत करने के आदेश सम्बन्धित स्थानीय रजिस्ट्रार विवाह, ग्राम पंचायत खुशनगरी, तहसील चुराह को पारित कर दिए जायेंगे।

आज दिनांक 15–01–2019 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/–
अतिरिक्त रजिस्ट्रार विवाह एवं उप–मण्डल दण्डाधिकारी,
चुराह, जिला चम्बा, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी, ककीरा, जिला चम्बा, हिमाचल प्रदेश

श्री पम्पी राम सुपुत्र श्री केहर सिंह, निवासी गांव रौणी, डाकघर तुनुहट्टी, उप–तहसील ककीरा, जिला चम्बा, हिमाचल प्रदेश।

विषय.–प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना–पत्र, ब्यान–हल्फी बमय अन्य कागजात इस आशय से गुजारा है कि उसकी जन्म तिथि 10–09–1985 है, जोकि ग्राम पंचायत तुनुहट्टी के रिकार्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी पम्पी राम सुपुत्र श्री केहर सिंह की जन्म तिथि ग्राम पंचायत तुनुहट्टी के रिकार्ड में दर्ज करने पर यदि किसी को कोई उजर/एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 08–05–2019 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 04–04–2019 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर

हस्ताक्षरित/–,
कार्यकारी दण्डाधिकारी,
ककीरा, जिला चम्बा (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर (हि0 प्र0)

प्रकरण संख्या : 4710

श्रीमती Prakasho Devi पुत्री श्री Govind Ram, निवासी Rampur Banjaran, तहसील पांवटा साहिब, जिला सिरमौर, हि0 प्र0 .. वादिया।

बनाम

आम जनता .. प्रतिवादी।

उनवान मुकद्दमा.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती Prakasho Devi पुत्री श्री Govind Ram, निवासी Rampur Banjaran, तहसील पांवटा साहिब, जिला सिरमौर, हि0 प्र0 ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि किन्हीं कारणों से उसकी जन्म तिथि 28–05–1955 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Rampur Bharapur में अपनी जन्म तिथि 28–05–1955 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को श्रीमती Prakasho Devi की जन्म तिथि ग्राम पंचायत Rampur Bharapur, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 12–05–2019 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 Prakasho Devi की जन्म–तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 11–04–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर (हि0 प्र0)

प्रकरण संख्या : 817

श्री Krishan Chand पुत्र श्री Munshi Ram, निवासी Kolar, तहसील पांवटा साहिब, जिला सिरमौर, हि0 प्र0 .. वादी।

बनाम

आम जनता .. प्रतिवादी।

उनवान मुकद्दमा.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Krishan Chand पुत्र श्री Munshi Ram, निवासी Kolar, तहसील पांवटा साहिब, जिला सिरमौर, हि0 प्र0 ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपने

पुत्र Devender Singh की जन्म तिथि 08–11–2000 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत 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 ग्राम पंचायत Kolar में अपने ऊपर वर्णित पुत्र की जन्म तिथि 08–11–2000 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Devender Singh की जन्म तिथि ग्राम पंचायत Kolar, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 12–05–2019 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 Devender Singh की जन्म–तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 11–04–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर (हि0 प्र0)

प्रकरण संख्या : 5907

श्रीमती Bibi पत्नी श्री Dhuman, निवासी Parduni, तहसील पांवटा साहिब, जिला सिरमौर (हि0 प्र0) ..... वादिया।

बनाम

आम जनता ..... प्रतिवादी।

उनवान मुकद्दमा.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती Bibi पत्नी श्री Dhuman, निवासी Parduni, तहसील पांवटा साहिब, जिला सिरमौर (हि0 प्र0) ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपनी पुत्री Bhago की जन्म तिथि 28–06–1988 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत Parduni में अपनी ऊपर वर्णित पुत्री की जन्म तिथि 28–06–1988 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Bhago की जन्म तिथि ग्राम पंचायत Parduni, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 12–05–2019 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 Bhago की जन्म–तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 11–04–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर (हि0 प्र0)

प्रकरण संख्या : 5966

Smt. Jasbir Kaur पत्नी स्व0 श्री Charanjeet Singh, निवासी Subhkhera, तहसील पांवटा साहिब, जिला सिरमौर, हि0 प्र0 ..... वादिया।

बनाम

आम जनता ..... प्रतिवादी

उनवान मुकद्दमा.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

Smt. Jasbir Kaur पत्नी स्व0 श्री Charanjeet Singh, निवासी Subhkhera, तहसील पांवटा साहिब, जिला सिरमौर, हि0 प्र0 ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपने पति Charanjeet Singh की मृत्यु तिथि 19–05–2010 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत Majra में अपने ऊपर वर्णित पति की मृत्यु तिथि 19–05–2010 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Charanjeet Singh की मृत्यु तिथि ग्राम पंचायत Majra, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 12–05–2019 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 Charanjeet Singh की मृत्यु तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार मृत्यु तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 11–04–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर (हि0 प्र0)

Ms. Chanchal Gurang पुत्री स्व0 श्री Tulsi Ram, निवासी Nadi, तहसील पांवटा साहिब, जिला सिरमौर (हि0 प्र0) ..... वादिया।

बनाम

आम जनता ..... प्रतिवादी।

उनवान मुकद्दमा.–प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

Ms. Chanchal Gurang पुत्री स्व0 श्री Tulsi Ram, निवासी Nadi, तहसील पांवटा साहिब, जिला सिरमौर (हि0 प्र0) ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपनी Chanchal Gurang की जन्म तिथि 24–01–1998 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत Malgi में अपनी जन्म तिथि 24–01–1998 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Ms. Chanchal Gurang की जन्म तिथि ग्राम पंचायत Malgi, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 12–5–2019 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 Chanchal Gurang की जन्म–तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 11–04–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर (हि0 प्र0)

प्रकरण संख्या : 5901

श्री Gopal Chand पुत्र श्री Doli Ram, निवासी Matak Majri, तहसील पांवटा साहिब, जिला सिरमौर (हि0 प्र0) ..... वादी।

बनाम

आम जनता ..... प्रतिवादी।

उनवान मुकद्दमा.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Gopal Chand पुत्र श्री Doli Ram, निवासी Matak Majri, तहसील पांवटा साहिब, जिला सिरमौर (हि0 प्र0) ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी माता

Neyorti Devi की मृत्यु तिथि 25–08–2004 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत 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 ग्राम पंचायत Majra में अपनी ऊपर वर्णित माता की मृत्यु तिथि 25–08–2004 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Neyorti Devi की मृत्यु तिथि ग्राम पंचायत Majra, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 12–05–2019 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 Neyorti Devi की मृत्यु तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार मृत्यु तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 11–04–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है