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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 11 जुलाई, 2019 / 20 आषाढ़, 1941

हिमाचल प्रदेश सरकार

सिंचाई एवं जन स्वास्थ्य विभाग

अधिसूचना

शिमला-2, 8 जुलाई, 2019

संख्या आई.पी.एच.-बी(एच)1-19/2017-सिरमौर.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव कन्डईवाला ठाकरा, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश में पम्प हाऊस के निर्माण हेतु भूमि अर्जित करनी

अपेक्षित है अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा-11 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों, कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उप-धारा द्वारा अपेक्षित अथवा अनुमत अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति, जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो, तो वह इस अधिसूचना के प्रकाशित होने के 60 (साठ) दिन की अवधि के भीतर लिखित रूप में कलैक्टर/समाहर्ता (लो0 नि0 वि0 विन्टर फिल्ड शिमला-3) के समक्ष अपनी आपत्ति दायर कर सकता है।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	क्षेत्र बीघे में
सिरमौर	नाहन	कन्डईवाला ठाकरा	416/363/239/1	00-10-00

आदेश द्वारा,

हस्ताक्षरित/—
सचिव (सिंचाई एवं जन स्वास्थ्य)।

सिंचाई एवं जन स्वास्थ्य विभाग

अधिसूचना

शिमला-2, 8 जुलाई, 2019

संख्या आई.पी.एच.-बी(एच)1-37/2018-सिरमौर—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव नेरी कोटडी, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश में पम्प हाऊस के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है। अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

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विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	क्षेत्र बीघे में
सिरमौर	नाहन	नेरी कोटड़ी	320 / 165	00-16-00

आदेश द्वारा,

हस्ताक्षरित /—
सचिव (सिंचाई एवं जन स्वास्थ्य)।

ANIMAL HUSBANDRY DEPARTMENT

NOTIFICATION

Shimla-171002, the 9th July, 2019

No. AHY-A (7)1/2001-Loose.—The Governor, Himachal Pradesh in exercise of the powers vested under Section 32 (1) (c) of the India Veterinary Council Act, 1984 (as adopted by Himachal Pradesh) and in supersession of this Department's Notification of even No. dated 17-08-2014, is pleased to appoint the following members to the Himachal Pradesh State Veterinary Council as the nominee of the State Government :—

1. Dr. H. S. Rana s/o Sh. S.R. Rana, r/o H. No. 144/4, Village & Post office Sarkaghat, Distt Mandi H. P.
2. Dr. Parvesh Kaushal s/o Late Sh. Tilak Raj Kaushal r/o Arya Nagar Una, Distt. Una, H.P.
3. Dr. Dalip Singh Mehta, Veterinary Officer, Veterinary Hospital Palli, Distt.Mandi, H.P.

By order,
Sd/-
Addl. Chief Secretary (AH).

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla, the 18th March, 2019*

No. Shram(A)6-1/2019(Awards)Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh.—

Sl. No.	Reference/ Application	Title	Section
1.	Ref. 33/202017	Sh. Dalip Singh <i>V/s</i> XEN, HPPWD, Kumarsain.	10
2.	Ref. 163/2018	Smt. Meera Devi <i>V/s</i> Director of Health Kasumpti & Ors.	10
3.	Ref. 91/2018	Sh. Rakesh Kumar <i>V/s</i> The Registrar LLR Group of Institute Solan.	10
4.	Ref. 29/2017	Sh. Dhian Singh <i>V/s</i> XEN, IPH, Arki	10
5.	Ref. 117/2018	Sh. Lok Raj <i>V/s</i> M/s Lotus Herbals Color Cosmetics, Baddi, Solan, H.P.	10
6.	Ref. 16/2017	Sh. Inder Singh <i>V/s</i> The D.F.O. Renukaji	10
7.	Ref. 11/2017	Sh. Surat Ram <i>V/s</i> The D.F.O. Renukaji	10
8.	Ref. 27/2012	Sh. Dalip Singh <i>V/s</i> M/s Himachal Futuristic Communications Ltd. Chambaghat, Solan & Anr.	10
9.	Ref. 98/2016	Sh. Chuni lal <i>V/s</i> XEN, IPH, Shimla-3 & M.C. Shimla.	10
10.	Ref. 98/2017	Sh. Karnail Singh <i>V/s</i> M/s Symbosis Pharma Pvt Ltd. Kala Amb, Sirmaur.	10
11.	Ref. 165/2017	J.P. Workers Union <i>V/s</i> G.M. M/s Himachal Baspa Power Ltd. Kinnaur.	10
12.	Ref. 83/2018	Smt. Sakina Devi <i>V/s</i> Block Primary Education Officer Shimla.& Ors.	10
13.	Ref. 01/2017	Sh. Jai Singh <i>V/s</i> XEN, IPH, Chaura Maidan, Shimla & M.C. Shimla.	10.
14.	Ref. 06/2013	Sh. Shalinder Kumar & 15 Ors. <i>V/s</i> M/s Liberty Shoes Ltd. Bata Mandi, Poanta Sahib.	10
15.	Ref. 112/2017	Sh. Devi Ram <i>V/s</i> The D.F.O. Shimla	10
16.	Ref. 60/2015	Sh. Amit Mehta <i>V/s</i> Ranbaxy Laboratories Ltd. Poanta Sahib.	10
17.	Ref. 20/2017	Sh. Dila Ram <i>V/s</i> M/s Sun Pharmaceuticals Industries, Poanta Sahib.	10
18.	Ref. 30/2017	Sh. Vikram Singh <i>V/s</i> M/s Sun Pharmaceuticals Industries, Poanta Sahib.	10
19.	Ref. 22/2017	Sh. Gaurav Kanojia <i>V/s</i> M/s Sun Pharmaceuticals Industries, Poanta Sahib.	10

20.	Ref. 21/2017	Sh. Pradeep Sharma V/s M/s Sun Pharmaceuticals Industries, Poanta Sahib.	10
21.	Ref. 10.2018	Workers Union V/s M/s Sun Pharmaceuticals Industries Ltd. & Ors., Poanta Sahib10.	10
22.	Ref. 07/2017	Sh. Udai Ram V/s The General Manager, H.P. Financial Corporation, Shimla.	10
23.	Ref. 144/2018	Sh. Geeta Ram Sharma V/s Chief Conservator of Forest, Shimla & Ors.	10
24.	App. 135/2017	Ms. Sonia V/s M/s health Biotech Limited, Baddi, District Solan, H.P.	2-A
25.	App. 136/2017	Ms. Deepa V/s M/s health Biotech Limited, Baddi, District Solan, H.P.	2-A
26.	App. 133/2017	Ms. Ganga Devi V/s M/s health Biotech Limited, Baddi, District Solan, H.P.	2-A
27.	App. 134/2017	Ms. Bindu V/s M/s Health Biotech Limited, Baddi, District Solan, H.P.	2-A
28.	App. 137/2017	Sh. Ram Ashray V/s M/s health Biotech Limited, Baddi District Solan, H.P.	2-A
29.	Ref. 146/2018	Smt. Kanta V/s Convent of Jesus and Mery, Navbahar, Shimla.	10
30.	Ref. 147/2018	Sh. Rajinder Kumar V/s Convent of Jesus and Mery, Navbahar, Shimla.	10
31.	Ref. 148/2018	Sh. Suleman V/s Convent of Jesus and Mery, Navbahar, Shimla.	10
32.	Ref. 149/2018	Sh. Bhag Singh V/s Convent of Jesus and Mery, Navbahar, Shimla.	10

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

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

Ref. No. 33 of 2017

Instituted on 1-3-2017

Decided on 24-11-2018

Dalip Singh s/o Shri Naranjan Singh resident of Village and P.O. Ogli, Tehsil Sunni, District Shimla, H.P. . .*Petitioner.*

Vs.

The Executive Engineer, H.P.PWD Division Kumarsain, Distt. Shimla, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Naresh Sharma, Advocate vice Shri Neel Kamal Sood, Advocate.

For respondent : Shri Prashant Singh, ADA.

AWARD

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

"Whether alleged termination of services of Shri Dalip Singh s/o Shri Naranjan Singh, V.P.O. Ogli, Tehsil Sunni, Distt. Shimla, H.P. during February, 1990 by the Executive Engineer, H.P.PWD Division Kumarsain, Distt. Shimla, H.P., who had worked for 46, 179 & 57 days only during the year, 1988, 1989 & 1990 respectively as beldar on daily wages with above employer and has raised his industrial dispute after about 23 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 46, 179 & 57 days only during the year 1988, 1989 & 1990 respectively and delay of about 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. Briefly, the case of the petitioner is that initially *w.e.f.* 1989, he was appointed as Class-IV employee by the respondent and worked as such till 1990 and thereafter his services were orally terminated without any reason. It is further stated that after the appointment of the petitioner, he worked at various places under respondent and he was terminated from service without serving any notice and without payment of compensation as required under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act) and the respondent department had engaged many fresh persons after the illegal termination of the petitioner and even many juniors to him namely Sawarnu Ram, Baldev Singh, Het Ram, Dev Raj, Amar Chand, Gopal Singh, Raj Kumar, Amehar Chand, Dharam Dass, Gursaran, Khima Ram, Bhaskara nand, Sant Ram, Prem Chand, Mela Ram etc. were also retained in violation of the provisions of sections 25-G and 25-H of the Act. It is also stated that the petitioner had completed 240 days in twelve calendar months preceding his termination. That the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but except assurance nothing was done. Against this back-drop a prayer has been made that the directions be issued to the respondent to re-instate the petitioner in service alongwith all consequential benefits/relief of back-wages, seniority, continuity and regularization of service.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability on account of delay and laches, that the petitioner has left the work at his own etc. On merits, it has been asserted that the petitioner was engaged as daily wager beldar during the month of November, 1998 and worked upto Feb., 1990. It is further asserted that the respondent never terminated/disengaged the services of the petitioner at any point of time, rather, he himself had left the work at his own, hence, there arose no question to serve any notice under section 25-F of the Act. It is denied that any junior to the petitioner has been engaged or retained. It is also asserted that the petitioner had failed to complete 240 days in any calendar year prior to leaving the work and he has neither approached the respondent regarding his re-employment nor he had made any representation to this effect and no assurance was given by the respondent for his re-engagement. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 4-7-2017.

- (1) Whether the termination of the services of the petitioner during Feb., 1990 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the petition is not maintainable on account of delay and laches as alleged? . . .*OPR.*

Relief.

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : Not pressed

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

REASONS FOR FINDINGS

Issue No. 1 :

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

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

9. The petitioner appeared into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence certified copy of order passed by this Court on 14-3-2017 Ex. PW-1/B, copy of order passed by the Hon'ble High Court in CWP No. 4749 of 2015

mark PX and list of workers under Jalog Sub Division *w.e.f.* 1-1-1996 to 31-12-1999 mark PY. In cross-examination, he denied that he had worked *w.e.f.* November 1988 to Feb., 1990. He further denied that he had worked for 46 days in the year, 1988, 179 days in the year, 1989 and 57 days in the year, 1990. He also denied that he had left the job at his own. He denied that he had never completed 240 days in any calendar year. He further denied that no junior person to him was retained. He admitted that he had raised the demand notice after a period of 27 years.

10. PW-2 Shri Tej Ram, Senior Assistant of Sub Division Jalog has brought on record the mandays chart of petitioner Ex. PW-2/A, seniority list of daily wagers *w.e.f.* 1999 to the year, 2008 pertaining to Sub Division Jalog Ex. PW-2/B. He deposed that all the persons mentioned in the seniority list are junior to the petitioner and they have been engaged on the basis of the orders of the Court. He also deposed that no notice was issued and no compensation was paid to the petitioner prior to his termination and no notice was issued to him for resumption of his duties. In cross-examination, he admitted that the petitioner had never completed 240 days in any calendar year. He further admitted that the petitioner had left the job at his own. He also admitted that after leaving of the job, the petitioner had never approached the respondent. He admitted that the department has not retained his junior except upon the orders of the Court.

11. On the other hand, the respondent has examined one Shri Nitya Nand, Junior Engineer, HPPWD Sub Division Jalog as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B, mandays chart Ex. RW-1/C and copies of order passed by Administrative Tribunal Mark RX-1 to Mark RX-21. In cross-examination, he admitted that no letter was issued to the petitioner for resumption of his duties. He also admitted that no retrenchment compensation was paid to the petitioner. He denied that the persons namely Sawrnu Ram, Baldev Singh, Het Ram, Dev Raj, Amar Chand, Gopal Singh, Raj Kumar, Mehar Chand, Dharam Dass, Gursaran Dass, Khema Ram, Bhaskarnand, Sant Ram, Prem Chand, Mela Ram, Tikkam Ram, Khem Raj, Kamap Prakash, Khem Chand, Bhupal Singh, Jeet Ram, Tej Ram, Niram Dass, Liaq Ram, Narayan Singh, Vidyadhar, Chunni Lal, Inder Dass, Dalip Kumar and Rewa Dass were junior to the petitioner. He further denied that the petitioner had completed 240 days in any calendar year. He also denied that the petitioner visited several times to their office for his reengagement and was every time assured that when his services would be required, he will be called.

12. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner was engaged as daily waged beldar by the respondent. The perusal of the record further reveals that the petitioner himself had abandoned the job. The abandonment of service has not been defined in the Act. In a case titled as **G.T. Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

“ From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

In *Buckingham Co. Vs. Venkatiah* (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or

relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

Furthermore, it has been held by the **Hon'ble Apex Court in Vijay S. Sathaye Vs. Indian Airlines Limited and Ors. (2013) 10 Supreme Court Cases 253**: that absence from duty in the beginning may be a mis-conduct but when absence is for a very long period, it may amount to voluntary abandonment of service. The relevant paras of the aforesaid judgment are reproduced as under:

"12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer."

"13. In *Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen*, this Court held as under (AIR p. 1570 para 6):

".....there would be the class of cases where long unauthorized absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee."

(See also: *Shahoodul Haque Vs. The Registrar, Co-operative Societies*,

"14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as retrenchment from service. (See: *State of Haryana Vs. Om Prakash*)"

16. In *Syndicate bank Vs. General Secretary Syndicate bank Staff Association and another* AIR 2000 S.C 2198 and *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, AIR 2000 S.C 2783, this court ruled that if a person is absented beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceased to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities.....

In a case titled as Nagar Parishad Vs. Bone Ram And Anr. (2005) ILLJ 123 HP, the workman remained absent from work for more than two years without leave or any communication to the employer and our own Hon'ble High Court has held that such an automatic termination of services, caused by workman himself and not by the employer, would not fall within the definition of "retrenchment". The relevant portion of the aforesaid judgment is reproduced as under:

"10. The workman, in this case remained absent from work for more than two years without leave or any communication to the employer. He did not contact his Employer or made any representation to any Authority about oral termination of his services. There was not a murmur of protest. In this background, the only inference which can be drawn from the conduct of the workman is that he abandoned his job and his services stood automatically terminated in law. Such an automatic termination of services, caused by

workman himself and not by the Employer, would not fall within the definition of "retrenchment".

In State of H.P. And Ors. Vs Presiding Judge And Anr. 2007 (3) Shim. LC 360, it has been held by the our own Hon'ble High Court that the presumption of abandoning the job can validly be raised from long absence without leave or information to the employer. The relevant portion of the aforesaid judgment is reproduced as under:

"19. This apart, expression 'voluntary retirement' in Clause (a) of Section 22(oo) of the Act, would indisputably include abandonment of job by an employee. In common law, an inference can be drawn from the length of absence from duty and surrounding circumstances that the workman relinquished his or her job voluntarily. The contract of service, I hardly need to emphasize, comes to an end when the workman abandons the job. Even though 'abandonment of service' is not defined in the Act yet abandonment would mean to 'leave completely arid finally. In other words, 'voluntary retirement' would include relinquishment of the work by a workman completely and finally which has to be gathered from the circumstances in each case. The presumption of abandoning the job can validly be raised from long absence without leave or information to the employer."

13. In the instant case, though, in his evidence by way of affidavit, the petitioner has deposed that his services were terminated by the respondent. However, no termination letter/order has been produced by him. He had also not deposed as to who had terminated his services. No co-workman has been examined by him to corroborate his testimony. He further deposed in his evidence by way of affidavit that the respondent had given him assurance that on the availability of work and funds he would be re-engaged, however, no material has been placed on record in this respect by the petitioner. In his claim petition, the petitioner has averred that he made several requests seeking his re-employment by visiting the office of respondent number of times but in this respect also no material has been placed on record by the petitioner. No representation/application has been filed by the petitioner to show that he had made several requests to the respondent for his re-employment. As per the terms of reference, the demand notice was raised by the petitioner after a period of 23 years but the petitioner has failed to mention the date either in his claim petition or in his evidence by way of affidavit regarding the date when he raised the demand notice. Therefore, in the absence of any evidence to the contrary, it can be presumed that the petitioner had raised the demand notice after a period of 23 years. However, no reason for the delay in raising the demand notice has been explained by the petitioner which also leads to the presumption that the petitioner himself had left the job of respondent and was not terminated from service otherwise he would not have awaited for a long period of 23 years.

14. The learned counsel for the petitioner further contended that the respondent department had not done any correspondence with the petitioner *qua* his leaving of job and the petitioner was not called upon to resume the duties, hence, it cannot be said that the petitioner had left the job voluntarily. However, this contention of the learned counsel of the petitioner cannot be accepted because it is a settled legal proposition that leaving the services of an employer by the workman is a valid mode of his abandonment and there is no illegality attached to the same and if the employer does not consider the abandonment of service by workman as a misconduct, law cannot force the employer to consider such abandonment as a misconduct and to issue notice and hold an enquiry because the employee cannot be termed as a slave. The Hon'ble Supreme Court in **Vijay S. Sathaye's case (supra)** has observed that an employee cannot be termed as a slave and he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very

long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

15. Thus, keeping in view the law laid down by the Hon'ble Supreme Court and by our own Hon'ble High Court and also from the facts and circumstances of the present case, an inference can be drawn that the petitioner had abandoned the service of the respondent voluntarily and he had no intention to join the duty with the respondent which constitutes "abandonment of service" on his part.

16. Even otherwise, it cannot be said that the respondent had violated the provisions of Section 25-F, 25-G & 25-H of the Act. The perusal of mandays chart Ex. PW-2/A shows that the petitioner was engaged in the month of November, 1988. No evidence to the contrary has been led by the petitioner that he was engaged *w.e.f.* the year, 1989 as stated by him in the claim petition as well as in the evidence by way of affidavit. Moreover, the perusal of the mandays chart Ex. RW-1/C shows that the petitioner had worked only for 46 days in the year, 1988, 179 days in 1989 and 57 days in the year, 1990 and he had not completed 240 days in twelve calendar months preceding his alleged termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

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

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

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

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. Rather as observed earlier, the mandays chart Ex. RW-1/C shows that the petitioner had worked only for a period of 180 days in twelve calendar months preceding his alleged termination. No evidence to the contrary has been led by the petitioner that he had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

17. The next contention raised by the learned counsel for the petitioner is that the juniors to the petitioner have been retained and fresh hands have been engaged in violation of the provisions of sections 25-G and 25-H of the Act. He has also relied upon the seniority list Ex. PW-2/B. However, this contention of the learned counsel for the petitioner cannot be accepted as the persons referred to by the petitioner in the list Ex. PW-2/B have been engaged on the basis of the orders of the Court as stated by PW-2 in his statement before this Court. He further stated that Dinesh Kumar s/o Shri Nika Ram was also engaged on the orders of the Court. The petitioner has failed to prove on record that the respondent department itself had retained the juniors of the petitioner without passing of any order by the Court. Moreover, the persons mentioned in the list Ex. PW-2/B have never voluntarily abandoned the job of the respondent department. The facts of the present case cannot be equated with the facts of the case of Dinesh Kumar s/o Shri Nika Ram as he had proved before this Court that he had completed 240 days in twelve calendar months preceding his termination and junior persons to him have been retained and fresh workers have been engaged by the respondents. As per the notification dated 22-04-2016 of Govt. of Himachal Pradesh, only those daily waged/contingent paid workers can be regularized who have completed seven years of continuous service with a minimum of 240 days in a calendar year. However in the present case the petitioner has failed to prove that he had completed seven years of continuous service with a minimum of 240 days in each calendar year. Furthermore, the petitioner cannot claim equal treatment with his alleged junior persons who had been working continuously with the department. As observed earlier, the petitioner had raised the present dispute after a period of 23 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 23 years is not entitled to claim any relief on the ground of equal treatment as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner.

18. Therefore, in view of the aforesaid decision of the Hon'ble Supreme Court and taking into consideration all the facts and circumstances of the case, it has been proved on record by the respondent that the petitioner had abandoned the job at his own and he was not terminated from service. Hence, it cannot be said that the termination of the services of the petitioner during Feb., 1990 without complying with the provisions of the Act is illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No.2 :

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

Issue No. 3 :

20. During the course of arguments, this issue was not pressed by the Ld. ADA for the respondent, hence, the same is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate

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

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

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

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

Ref. No. 163 of 2018 alongwith

App. No. 15 of 2018

Instituted on 21-2-2018

Decided on 29-11-2018

Meera Devi w/o late Shri Kanshi Ram r/o Village Nohra, P.O & Tehsil Nohra, District Sirmaur, HP. *.Petitioner.*

1. The Director Health Services, Himachal Pradesh, Kasumpti Shimla-9.
2. Chief Medical Officer, Sirmaur at Nahan, Civil Hospital Nahan, District Sirmaur, H.P.
3. Medical Officer Incharge, CHC Nohradhar, Tehsil Sangrah, District Sirmour, HP. *. Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

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

For respondents : Shri Prashant Singh, ADA.

AWARD

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

"Whether termination of services of Smt. Meera Devi w/o late Shri Kanshi Ram r/o Village & P.O Nohra, Tehsil Nohra, District Sirmaur, H.P. vide order dated 18-8-2017 of the Director of Health Services Himachal Pradesh, Shimla-9 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that *vide* letter dated 21-5-2007, she was appointed as part time Class-IV sweeper by the respondent and *w.e.f.* November, 2016, she was made as daily wager class-IV and *vide* letter dated 24-8-2017, her services were terminated on the false allegations made by the department without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further averred that the work and conduct of the petitioner remained up to the mark of concerned official and nothing contrary was conveyed to her and she always discharged her duties sincerely and honestly. That the petitioner had completed 240 days in each calendar year and her services have been terminated without complying with the mandatory provisions of sections 25-F, 25-G and 25-H of the Act as juniors of the petitioner are still working with the department. It is also averred that the petitioner is a workman as defined under the Act as she used to work manually with the department and after her termination she visited the office of the Medical Officer-in-charge, Nohradhar and Chief Medical Officer Nahan for her re-engagement but of no avail. That the termination of the services of the petitioner without holding enquiry and without complying with the mandatory provisions of the Act, is illegal and the work which the petitioner was performing with the department is still available. That the petitioner is unemployed and is nowhere gainfully employed. Against this back-drop it has been prayed that the illegal termination order dated 24-8-2017 passed by the Medical Officer incharge, CHC Nohradhar be set aside and the petitioner be reinstated in service *w.e.f.* 24-8-2017 with all consequential service benefits. It is further prayed that the respondents be directed to pay the damages to the petitioner to the tune of ₹ 2,00,000/- and ₹ 25,000/- as cost of litigation.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken that the petition is not maintainable for her own acts and conduct, that the petitioner has not come to the Court with clean hands and the petition is hopelessly devoid of merits. On merits, it has been asserted that the petitioner remained absent from duties from the afternoon of 11-7-2017 and later on *vide* letter dated 17-7-2017, the Station Head Officer, Police Station Nahan had informed about the arrest of petitioner in case FIR No. 91/2017 dated 10-7-2017 under section 366, 370, 370A (2), 376, 377, 506, 34 IPC in Police Station Nahan and after the receipt of report, the same was transmitted to the Block Medical Officer Sangrah and thereafter the respondent *vide* officer order dated 18-8-2017 intimated the termination of the petitioner on the grounds for being remained under judicial custody/lock up for more than 48 hours and the termination of the petitioner was conveyed to her. The termination of the petitioner came to happen on the basis of the legal action meted out by the Police Department after leveling charges against her under various sections of IPC. It is admitted that he petitioner had completed 240 days and the termination of the petitioner was effected on the basis of legal action taken by the Police for her involvement in illegal activities. The respondents prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed by this Court on 27-6-2018 :

- (1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 24-8-2017 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .OPP.
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .OPP.

(3) Whether the petition is not maintainable as alleged?

..OPR.

Relief.

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

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

Issue No. 1: Yes

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

Issue No. 3: No

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

Reasons for findings

Issues No. 1 :

8. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and her services had been terminated by the respondents on the false allegations illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondents and even the respondents had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand learned ADA for the respondents contended that the termination of the petitioner came to happen on the basis of the legal action meted out by the Police Department after leveling charges against her under various sections of IPC and she remained under judicial custody for more than 48 hours, hence, the respondents had terminated her from service.

10. To prove her case, the petitioner stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as stated in the claim petition. She also tendered in evidence termination letter Ex. PW-1/B, demand notice Ex. PW-1/C and copy of letter dated 9-10-2017 issued by Labour Officer Ex. PW-1/D and stated that no Court has ever convicted her. In cross-examination, she admitted that she was engaged as daily wage sweeper from the year, 2016. She further admitted that she remained absent from duty on 11-7-2017. She also admitted that on 12-7-2017, the police had informed her office that she was arrested in case FIR No. 91/2017 under section 366, 370-A (2), 376, 377, 506, 34 IPC at PS Nahan. She admitted that her services were terminated on 18-8-2017 by the Director Health Services on the ground that she remained in custody for 48 hours. She denied that on 24-8-2017, the Medical Officer CHC Nohradhar had conveyed the termination order to her. She admitted that she had written a letter dated 9-8-2017 Mark R-1 to BMO Sangrah alongwith copy of her bail order Mark R-2. She further admitted that she remained in custody for about 24 hours. She also admitted that the case pertaining to FIR No. 91/2017 is still pending in the Court.

11. On the other hand the respondent examined Dr. Aseem Kaushik as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter Ex. RW-1/B, copy of FIR Ex. RW-1/C, information written by him to PS Nauradhar regarding petitioner Ex. RW-1/D and the copy of bail order passed by the Ld. Additional Sessions Judge, Sirmaur at Nahan in favour of petitioner Ex. RW-1/E, copy of office order dated 20-8-2017 Ex. RW-1/F and office order dated 18-8-2017 Ex. RW-1/G. In cross-examination, he admitted that the petitioner was engaged as a part time sweeper on 21-5-2007 and she started working on daily wages basis *w.e.f.* 1-11-2016. He further admitted that the petitioner had worked continuously. He also admitted that the petitioner had completed 240 days in preceding twelve calendar months from the date of her termination. He admitted that neither any show cause notice was issued to the petitioner nor any enquiry was conducted against her prior to her termination. He further admitted that the petitioner used to visit their office after her termination for her reinstatement. He denied that the services of the petitioner were terminated illegally. He admitted that juniors of the petitioner are still working with the department. He further admitted that after the termination of the services of the petitioner, Ravinder Singh has been appointed as daily wagger in their office. He also admitted that office orders Ex. RW-1/F and Ex. RW-1/G were not sent to the petitioner.

12. Before, I proceed further it is important to mention here that the petitioner has directly filed the application before this Court under section 2-A of the Act but after some time on the same cause of action the appropriate government has referred the dispute under reference to this Court and thereafter *vide* order dated 23-10-2018, the application has been clubbed with the reference for adjudication.

13. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner was engaged as part time sweeper by the respondents on 21-5-2007 and thereafter *w.e.f.* 1-11-2016, she had worked as daily waged sweeper with the respondents. It is the admitted case of the parties that the petitioner had worked continuously with the respondents and had completed 240 days in twelve calendar months prior to her termination. It is also the admitted case of the parties that the services of the petitioner were terminated *w.e.f.* 18-8-2017 on the ground that she was arrested by the Police in case FIR No. 91/2017 Ex. RW-1/C under section 366, 370-A (2), 376, 377, 506, 34 IPC at PS Nahan and remained in judicial custody for 48 hours. It is also not disputed that the petitioner has been released on bail *vide* order dated 5-8-2017 Ex. RW-1/E passed by the Ld. Additional Sessions Judge, Sirmaur at Nahan and the case pertaining to FIR No. 91/2017 is still pending in the Court. It is also clear from the record that the services of the petitioner were terminated without serving any chargesheet and without holding any enquiry. Now, the question which arises for consideration before this Court is as to whether the action of the respondents was illegal and unjustified in terminating the services of the petitioner without holding any domestic enquiry and without following the principles of natural justice. It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. In **D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments-221**, the Hon'ble Apex Court has held as under:

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In a judgment given by our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of H.P. and ors.** the workman was arrested and was

convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

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

9.

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

11.

12.

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case as observed earlier, neither any show cause notice nor any chargesheet was issued to the petitioner before terminating her from service. No explanation was called for from her and no domestic enquiry was conducted against her to provide the opportunity of being heard to her in flagrant violation of the principles of natural justice. The petitioner had worked continuously with the respondents and had completed 240 days in preceding 12 months before her termination. Therefore, it was incumbent upon the respondents to have conducted the enquiry against the petitioner prior to her termination. However, no enquiry was held before terminating her services. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. It is also clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor she was paid any compensation in lieu thereof. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

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

have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

14. In the instant case also as observed aforesaid, the respondents have failed to comply with the provisions of Section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 18-8-2017 by the respondents without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. The learned counsel of the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained her juniors who are still working and also had engaged fresh hands as such the respondents had violated the principles of "last come first go". It has been admitted by RW-1 in his cross-examination that juniors to the petitioner are still working with the department and after the termination of the services of the petitioner, Ravinder Singh has been appointed as daily wager in their office. Thus, from the evidence, on record, it has been established that after the termination of the services of the petitioner, junior persons have been retained and fresh hand had been engaged by the respondents without giving an opportunity to the petitioner for re-employment, which is clear cut violation of sections 25-G & 25-H of the Act.

16. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 18-8-2017, by the respondents without complying with the provisions of the Act, is illegal and unjustified. Accordingly issue no.1 is decided in favour of the petitioner and against the respondents.

Issue No. 2 :

17. Since, I have held under issue No. 1 above that the termination of the services of the petitioner by the respondents *w.e.f.* 18-8-2017 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

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

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

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

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

Issue No. 3:

21. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is neither competent nor maintainable especially when the petitioner has filed the present petition pursuant to the demand notice raised by her before the Conciliation Officer and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is neither competent nor maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issues No. 1 to 3, the claim petition of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages. The reference alongwith application No. 15 of 2018 stands answered in favour of the petitioner and against the respondents. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th Day of November, 2018.

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

24-11-2018

Present: Petitioner in person
Shri Manoj Kumar, AR for respondent

At this stage, it has been stated by the petitioner that he has settled the dispute with the respondent LR Group of Institute out of Court and had received full & final settlement amount of Rs. 11,361/- from the respondent. He further stated that now he does not have any claim against the respondent arising out of the present reference and he does not want to pursue the present reference any further. To this effect his statement recorded separately.

Vide separate statement, it has been stated by Shri Manoj Kumar, AR for the respondent that the petitioner had entered into out of Court settlement with the respondent and had received a sum of Rs. 11,361/- from the respondent and now there is no dispute between the parties arising out of the present reference.

Therefore, in view of the aforesaid statement of the petitioner and AR for respondent, the dispute between them stands settled. Hence, the reference is answered accordingly. The statements of petitioner and AR for respondent, which shall form a part of this award/order. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to record.

Announced:
24-11-2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

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

Ref. No. 29 of 2017

Instituted on 1-3-2017

Decided on 17-12-2018

Dhian Singh s/o Sh. Daya Ram r/o V.P.O. Chausha, Tehsil Kandaghat, Distt. Solan, H.P.
. Petitioner.

Vs.

Executive Engineer, I & PH Division, Arki, District Solan, H.P. *. Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjana Verma, Advocate *vice* Shri Virender Thakur, Advocate.

For respondent : Ms. Reena Chauhan, Dy. DA

AWARD

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

"Whether alleged termination of services of Shri Dhian Singh s/o Shri Daya Ram r/o V.P.O. Chausha, Tehsil Kandaghat, Distt. Solan, during September, 1998 by the Executive Engineer, I & PH Division, Arki, Distt. Solan, H.P. who had worked for 4, 165 and 154 days only during the years 1996, 1997 and 1998 respectively and has raised his industrial dispute 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 the working period of 4, 165 and 154 days only during the years, 1996, 1997 and 1998 respectively 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?"

2. Briefly, the case of the petitioner is that initially in the year, 1992, he was appointed as daily waged labourer/beldar by the respondent and he worked for more than 240 days in each calendar year and there are number of junior persons who are still working with the respondent department whereas the services of the petitioner were orally terminated on 31-8-1998 without any prior notice or retrenchment compensation which is a clear cut violation of sections 25-F & 25-G of the Industrial Disputes Act, 1947 (hereinafter referred as Act). It is further averred that the petitioner was working alongwith similarly situated persons namely S/Shri Shiv Dayal, Gopal Krishan and Lekh Ram whose services have been regularized by the department but the services of the petitioner have not been re-engaged even after repeated requests made by him but despite assurance he was not re-engaged. It is also averred that there are many other persons who are very juniors to the petitioner and some of them were appointed afresh in violation of section 25-G of the Act. Against this back-drop, the petitioner has prayed for his re-engagement with all consequential service benefits including seniority and back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability and delay and laches. On merits, it has been asserted that the petitioner was engaged as daily waged beldar in December, 1996 and he worked intermittently till August, 1998 and he never attended his duties regularly as he was very casual and had been attending his work at his own convenience. It is further asserted that the petitioner had not completed 240 days in any calendar year or preceding 12 months and his services were never terminated by the respondent who had left the work without any intimation to respondent department. It is denied that the respondent has violated sections 25-F and 25-G of the Act. It is further denied that Shiv Dayal, Gopal Krishan and Lekh Ram are junior to the petitioner. It is asserted that the petitioner raised labour dispute after lapse of period of more than 17 years. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner re-affirmed his allegation by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 7-3-2018 :

- (1) Whether the termination of the services of the petitioner during September, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the petition is not maintainable as alleged? . . .*OPR.*
- (4) Whether the petition is hit by delay and laches as alleged? . . .*OPR.*

Relief.

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : No

Issue No. 4 : Yes

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

REASONS FOR FINDINGS

Issues No. 1 & 4 :

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

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

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

11. The petitioner appeared into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the seniority list Ex. PW-1/B. In cross-examination, he denied that he was engaged in December, 1996. He admitted that he had worked upto 31-8-1998. He denied that he had left the job at his own. He further admitted that Shiv Dayal, Gopal Krishan and Lekh Ram were engaged prior to him. He denied that his services were never terminated by the department. He admitted that he had raised the demand notice after a period of 13 years. He expressed his ignorance that Suresh Kumar, Sanjeev Kumar, Vikram and Satya Devi have been appointed on compesionate ground.

12. On the other hand, the respondent has examined one Shri Munish Sharma, Assistant Engineer IPH Sub Division Subathu as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter Ex. RW-1/B and copy of mandays chart Ex. RW-1/C. In cross-examination, he admitted that neither any notice was issued nor any compensation was given to the petitioner. He further admitted that no notice was issued to the petitioner for resumption of his duties and no enquiry was held against him.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent intermittently *w.e.f.* 21-12-1996 to 31-8-1998 as is evident from the mandays chart of the petitioner Ex. RW-1/C. From the perusal of mandays chart Ex. RW-1/C, it is also clear that the petitioner had worked for 4 days in the year, 1996, 165 days in the year, 1997 and 154 days in the year, 1998 meaning thereby that he had not completed 240 days in any calendar year and in twelve calendar months preceding his alleged termination. The perusal of the record further reveals that the petitioner himself had abandoned the job. The abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

“ From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

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

Furthermore, it has been held by the **Hon'ble Apex Court in Vijay S. Sathaye Vs. Indian Airlines Limited and Ors. (2013) 10 Supreme Court Cases 253**: that absence from duty in the beginning may be a mis-conduct but when absence is for a very long period, it may amount to voluntary abandonment of service. The relevant paras of the aforesaid judgment are reproduced as under:

“12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

"13. In *Jeewanlal (1929) Ltd., Calcutta vs. Its Workmen*, this Court held as under (AIR p. 1570 para 6):

“.....there would be the class of cases where long unauthorized absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.”

(See also: *Shahoodul Haque vs. The Registrar, Co-operative Societies*,

“14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the

employee and the employer has no role in it. Such an act cannot be termed as "retrenchment" from service. (See: State of Haryana v. Om Prakash)"

16. In Syndicate bank Vs. General Secretary Syndicate bank Staff Association and another AIR 2000 S.C 2198 and Aligarh Muslim University and Others Vs. Mansoor Ali Khan, AIR 2000 S.C 2783, this court ruled that if a person is absented beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceased to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities.....

In a case titled as Nagar Parishad Vs. Bone Ram And Anr. (2005) II LLJ 123 HP, the workman remained absent from work for more than two years without leave or any communication to the employer and our own Hon'ble High Court has held that such an automatic termination of services, caused by workman himself and not by the employer, would not fall within the definition of "retrenchment". The relevant portion of the aforesaid judgment is reproduced as under:

"10. The workman, in this case remained absent from work for more than two years without leave or any communication to the employer. He did not contact his Employer or made any representation to any Authority about oral termination of his services. There was not a murmur of protest. In this background, the only inference which can be drawn from the conduct of the workman is that he abandoned his job and his services stood automatically terminated in law. Such an automatic termination of services, caused by workman himself and not by the Employer, would not fall within the definition of "retrenchment".

In State of H.P. And Ors. Vs Presiding Judge And Anr. 2007 (3) Shim.LC 360, it has been held by the our own Hon'ble High Court that the presumption of abandoning the job can validly be raised from long absence without leave or information to the employer. The relevant portion of the aforesaid judgment is reproduced as under:

"19. This apart, expression 'voluntary retirement' in Clause (a) of Section 22(oo) of the Act, would indisputably include abandonment of job by an employee. In common law, an inference can be drawn from the length of absence from duty and surrounding circumstances that the workman relinquished his or her job voluntarily. The contract of service, I hardly need to emphasize, comes to an end when the workman abandons the job. Even though 'abandonment of service' is not defined in the Act yet abandonment would mean to 'leave completely and finally. In other words, 'voluntary retirement' would include relinquishment of the work by a workman completely and finally which has to be gathered from the circumstances in each case. The presumption of abandoning the job can validly be raised from long absence without leave or information to the employer."

14. In the instant case, though, in his evidence by way of affidavit, the petitioner has deposed that his services were terminated by the respondent. However, no termination letter/order has been produced by him. No co-workman has been examined by him to corroborate his testimony. He further deposed in his evidence by way of affidavit that the respondent had given him assurance that on the availability of work and funds he would be re-engaged, however, no material has been placed on record in this respect by the petitioner. In his claim petition, the petitioner has averred that he made several requests seeking his re-employment by visiting the office of respondent number of times but in this respect also no material has been placed on record by the petitioner. No representation/application has been filed by the petitioner to

show that he had made several requests to the respondent for his re-employment. As per the terms of reference, the demand notice was raised by the petitioner after a period of 13 years which also leads to the presumption that the petitioner himself had left the job of respondent and was not terminated from service otherwise he would not have awaited for a long period of 13 years. Now, the question which arises for consideration before this Court is as to whether the claim filed by the petitioner is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Therefore, the position of law in respect of a stale claim is required to be seen.

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

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh* that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

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

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

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

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

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

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

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

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

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down

in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

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

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

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

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

18. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay.

The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

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

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

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

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

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

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

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

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

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

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

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

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

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

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during September 1998 and he raised the present dispute after a period of more than 13 years. But the petitioner has failed to explain the delay of 13 years in raising the industrial dispute as no evidence in this respect has been placed on record by the petitioner. Rather, he had kept silent and had not taken any steps to raise the dispute *qua* his alleged termination for the period of about 13 years. Therefore, the claim is highly stale and belated and is not maintainable and liable to be dismissed on the ground of delay in raising the dispute.

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

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

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

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

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. Rather the mandays chart Ex. RW-1/C shows that the petitioner had worked only for a period of 4 days in the year, 1996, 165 days in the year, 1997 and 154 days in the year, 1998. No evidence to the contrary has been led by the petitioner that he had completed 240 days in each calendar year and in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

25. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the provisions of sections 25-G and 25-H of the Act. However, no satisfactory evidence has been led by the petitioner to this effect. In his cross-examination, the petitioner admitted that Shri Shiv Dayal, Gopal Krishan and Lekh Ram were engaged prior to him meaning thereby that they were not juniors to the petitioner. Furthermore, RW-1 admitted in cross-examination that four fresh persons were engaged only on compassionate grounds at Sub Division Subathu. The petitioner has failed to give the name of the persons who were given fresh appointment by the respondent. Therefore, in the absence of any evidence on record, the petitioner has failed to establish that the respondent had violated the provisions of sections 25-G and 25-H of the Act. Moreover, as observed earlier, the petitioner had raised the present dispute after a period of 13 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 13 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner.

26. Moreover, since the petitioner had raised the present dispute after a lapse of about 13 years as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2 :

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

Issue No. 3 :

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

Relief :

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

Announced in the open Court today on this 17th day of December, 2018.

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

16-11-2018

Present: None for the petitioner
Shri Rajiv Sharma, Advocate for respondent

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

"Whether termination of services of shri Lok Raj s/o Shri Man Singh r/o Village Raholi, P.O Pangna, Tehsil Karsog, District Mandi, H.P. by the Factory Manager M/s Lotus Herbals Color Cosmetics Plot No. 80-B & C, Export promotion park Phase-1, Jharmajri, Baddi, District Solan, H.P. w.e.f. 16-8-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

From the aforesaid reference, it is clear that the petitioner has alleged his termination w.e.f. 16-8-2016 to be illegal and unjustified but despite having availed opportunity, he has failed to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the service of the petitioner has been terminated illegally by the respondent. Hence, in the absence of any material on record, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
16.11.2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla
Camp at Nalagarh.

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

Ref. No. 11 of 2017

Instituted on 6-1-2017

Decided on 2-11-2018

Inder Singh s/o Shri Mani Ram, Village Sherkhai, P.O. Pamanal, Tehsil-Shillai, Distt. Sirmaur, H.P. Through Shri J.C. Bhardwaj President H.P.-AITUC, HQ: Saproon, Solan, H.P.
. .Petitioner.

The Divisional Forest Officer, (D.F.O.), Renukaji Forest Division Renukaji, Distt. Sirmaur, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, AR
For respondent: Shri Prashant Singh, ADA

AWARD

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

"Whether termination of the services of Shri Inder Singh s/o Shri Mani Ram, Village-Sherkhi, P.O. Pamanal, Tehsil Shillai, Distt. Sirmaur, H.P. by the Divisional Forest Officer, Renukaji, Distt. Sirmaur, H.P. w.e.f. 01-12-2011, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. In nutshell, the case of petitioner is that he was engaged as labourer/beldar in the month of Jan., 1997 and remained as such continuously till 1-12-2011 on which date the petitioner was illegally restrained from attending his duties without any speaking orders and without any cogent reasons and justifications. It is further averred that the petitioner had worked for more than 14 years with the respondent and had completed 240 days in every calendar year during the tenure of his services and also within 12 calendar months preceding his termination but the respondent had terminated his services without conducting any enquiry against him which is not sustainable under law. It is also averred that the services of the petitioner were terminated without any notice, retrenchment compensation and without necessary compliance of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) and even while terminating the services of the petitioner, the services of junior/fresh workmen in the same establishment were retained/engaged by the respondent in violation of the provisions of sections 25-G and 25-H of the Act. It is averred that the action of the respondent in removing the services of the petitioner is biased, unfair and unreasonable and followed the policy of "hire and fire" formula which is not sustainable under law. That the petitioner is unemployed since the date of his illegal termination and has not been employed anywhere till date. Against this back-drop it has been prayed that the petitioner be reinstated in service with retrospective effect with full back-wages, seniority and other consequential service benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objection regarding maintainability has been taken. On merits, it has been asserted that the petitioner was never engaged as beldar/labourer by the respondent department and he had never worked in the department, hence, the question of working for 14 years with 240 days in each calendar year and termination of his services does not arise. It is further asserted that the seniority list prepared in Shillai Range is tempered on which an FIR was lodged with the Police station Shillai which is under investigation, hence, the respondent had not violated any provisions of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed by this Court on 26-7-2017.

- (1) Whether the termination of the services of the petitioner *w.e.f.* 1-12-2011 by the respondent without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the claim petition is not maintainable? . . .*OPR.*

Relief.

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : No

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

REASONS FOR FINDINGS

Issue No. 1 :

8. The AR for the petitioner contended that the petitioner had completed 240 days in each calendar year and his services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondent and even the respondent had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA for respondent contended that the services of the petitioner were never engaged by the respondent department, hence, the question of his termination and retaining/engaging his juniors does not arise at all.

10. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as beldar by the respondent in Jan., 1997 and had worked upto 1-12-2011 when his services were orally terminated. He further stated that neither any notice was given to him nor any compensation was paid prior to his termination. He had completed 240 days in each calendar year and also in preceding twelve calendar months before his termination. He also deposed that the persons who were engaged alongwith him have now been regularized and the department had also prepared seniority list of the workers at division level. In cross-examination, he denied that he was never engaged by the respondent department and never

terminated his services. He further denied that he had never completed 240 days in any calendar year. He also denied that the seniority list was tempered. He admitted that his name is not reflected in the seniority list mark RX. He further admitted that an enquiry was conducted due to the tempering of the seniority list and later on an FIR was registered.

11. On the other hand, the respondent has examined one Shri Suprabhat Thakur, Range Officer, Forest Range, Shillai as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B and copy of seniority list Ex. RW-1/C. In cross-examination, he denied that the name of the petitioner is at serial No. 34 of the seniority list Ex. RW-1/C. He further denied that the officers of the department had tempered with seniority list. He admitted that Giar Singh has been regularized.

12. Shri Shreshtha Nand, Divisional Manager, H.P. Forest Corporation Himcashth Sale Depot., Baddi, appeared into the witness box as RW-2 to depose that he remained posted as Assistant Conservator of Forest Division *w.e.f.* 4-9-2014 to 5-12-2015 and he was appointed as an enquiry officer by the DFO to conduct the enquiry regarding the tempering of seniority list of daily wagers of Shillai Range and in the enquiry he found that the record maintained at Division level and Range levels were different. He also tendered in evidence the enquiry report Ex. RW-2/A. In cross-examination, he denied that the department had done tempering in the seniority list to remove the name of the petitioner. He admitted that he had not seen the muster rolls of the workers at the time of enquiry. He denied that he had tried to save the officials of the department in his enquiry.

13. RW-3 Shri Sanjay Kumar, HHC Police Station Shillai tendered in evidence the copy of FIR No. 71/2015 dated 10-11-2015 Ex. RW-3/A. In cross-examination, he stated that the investigation in the case is complete and the untraced report is pending consideration before the court of Ld. ACJM Nahan.

14. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner has failed to prove on record that he was ever engaged as daily waged labourer/beldar by the respondent. The case of the petitioner is that he was engaged by the respondent in the month of Jan., 1997 and remained as such continuously till 1-12-2011, however no cogent and satisfactory evidence has been led by the petitioner. No appointment letter or any other document has been placed on record by the petitioner in this respect. The name of petitioner is also not mentioned in the seniority list Ex RW-1/C. It has also come in the evidence that tempering was done in the seniority list of daily wagers of Shillai forest range from the year 1990 to the year 2003 and RW-2 Shri Shreshtha Nand, the then Assistant Conservator of Forest conducted the enquiry regarding the tempering of seniority list of daily wagers of Shillai Range and in the enquiry he found that the record maintained at Division level and Range levels were different *vide* enquiry report Ex. RW-2/A and recommended the matter for investigation by the police and thereafter an F.I.R. No.71/2015 dt. 10-11-2015 Ex. RW-3/A. was lodged in Police Station Shillai and now the investigation in the case is complete and the untraced report is pending consideration before the court of Ld. ACJM Nahan. However this court will not go into the question of tempering of seniority list of daily wagers of Shillai forest range from the year 1990 to the year 2003. But as observed earlier the fact remains that the name of petitioner is not mentioned in the seniority list Ex RW-1/C. It was incumbent upon the petitioner to prove his case by summoning or producing the record of the respondent before this court to prove that he was engaged by the respondent, however for the reasons best known to the petitioner, he has failed to produce or summon any record of the respondent. Therefore, in the absence of any cogent and satisfactory evidence on record, it can not be said that the petitioner was engaged by the respondent. Since the petitioner has failed to

prove on record that he was engaged by the respondent, hence, there is no question of violation of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 by the respondent and as such no protection of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 can be granted to the petitioner.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the alleged termination of the services of the petitioner *w.e.f.* 1-12-2011 by the respondent is not illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the respondent and against the petitioner.

Issue No. 2 :

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

Issue No. 3 :

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

Relief :

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

Announced in the open Court today on this 2nd day of November, 2018.

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

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

Ref. No. 11 of 2017

Instituted on 6-1-2017

Decided on 2-11-2018

Surat Ram s/o Shri Hari Ram, Village Sherkhai, P.O. Pamanal, Tehsil-Shillai, Distt. Sirmaur, H.P. Through Shri J.C. Bhardwaj President H.P.-AITUC, HQ: Saproon, Solan, H.P.

. .Petitioner.

The Divisional Forest Officer, (D.F.O.), Renukaji Forest Division Renukaji, Distt. Sirmaur, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR
For respondent : Shri Prashant Singh, ADA

AWARD

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

"Whether termination of the services of Shri Surat Ram s/o Shri Hari Ram, Village-Sherkhai, P.O. Pamanal, Tehsil Shillai, Distt. Sirmaur, H.P. by the Divisional Forest Officer, Renukaji, Distt. Sirmaur, H.P. w.e.f. 01-12-2011, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. In nutshell, the case of petitioner is that he was engaged as labourer/beldar in the month of Jan., 1997 and remained as such continuously till 1-12-2011 on which date the petitioner was illegally restrained from attending his duties without any speaking orders and without any cogent reasons and justifications. It is further averred that the petitioner had worked for more than 14 years with the respondent and had completed 240 days in every calendar year during the tenure of his services and also within 12 calendar months preceding his termination but the respondent had terminated his services without conducting any enquiry against him which is not sustainable under law. It is also averred that the services of the petitioner were terminated without any notice, retrenchment compensation and without necessary compliance of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) and even while terminating the services of the petitioner, the services of junior/fresh workmen in the same establishment were retained/engaged by the respondent in violation of the provisions of sections 25-G and 25-H of the Act. It is averred that the action of the respondent in removing the services of the petitioner is biased, unfair and unreasonable and followed the policy of "hire and fire" formula which is not sustainable under law. That the petitioner is unemployed since the date of his illegal termination and has not been employed anywhere till date. Against this back-drop it has been prayed that the petitioner be reinstated in service with retrospective effect with full back-wages, seniority and other consequential service benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objection regarding maintainability has been taken. On merits, it has been asserted that the petitioner was never engaged as beldar/labourer by the respondent department and he had never worked in the department, hence, the question of working for 14 years with 240 days in each calendar year and termination of his services does not arise. It is further asserted that the seniority list prepared in Shillai Range is tempered on which an FIR was lodged with the Police station Shillai which is under investigation, hence, the respondent had not violated any provisions of sections 25-G and 25-H of the Act. The respondent prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed by this Court on 26-7-2017 :

- (1) Whether the termination of the services of the petitioner *w.e.f.* 1-12-2011 by the respondent without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the claim petition is not maintainable? . . .*OPR.*

Relief.

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

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

Issue No. 1 :

Issue No. 2 :

Issue No. 3 :

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

REASONS FOR FINDINGS

Issue No. 1 :

8. The AR for the petitioner contended that the petitioner had completed 240 days in each calendar year and his services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondent and even the respondent had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA for respondent contended that the services of the petitioner were never engaged by the respondent department, hence, the question of his termination and retaining/engaging his juniors does not arise at all.

10. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as beldar by the respondent in Jan., 197 and had worked upto 1-12-2011 when his services were orally terminated. He further stated that neither any notice was given to him nor any compensation was paid prior to his termination. He had completed 240 days in each calendar year and also in preceding twelve calendar months before his termination. He also deposed that the persons who were engaged alongwith him have now been regularized and the department had also prepared seniority list of the workers at division level. In cross-examination, he denied that he was never engaged by the respondent department and never

terminated his services. He further denied that he had never completed 240 days in any calendar year. He also denied that the seniority list was tempered. He admitted that his name is not reflected in the seniority list mark RX. He further admitted that an enquiry was conducted due to the tempering of the seniority list and later on an FIR was registered.

11. On the other hand, the respondent has examined one Shri Suprabhat Thakur, Range Officer, Forest Range, Shillai as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of authority letter Ex. RW-1/B and copy of seniority list Ex. RW-1/C. In cross-examination, he denied that the name of the petitioner is at serial No. 28 of the seniority list Ex. RW-1/C. He further denied that the officers of the department had tempered with seniority list. He admitted that Giar Singh has been regularized.

12. Shri Shreshtha Nand, Divisional Manager, H.P. Forest Corporation Himachal Sale Depot., Baddi, appeared into the witness box as RW-3 to depose that he remained posted as Assistant Conservator of Forest Division w.e.f. 4-9-2014 to 5-12-2015 and he was appointed as an enquiry officer by the DFO to conduct the enquiry regarding the tempering of seniority list of daily wagers of Shillai Range and in the enquiry he found that the record maintained at Division level and Range levels were different and tendered in evidence the enquiry report Ex. RW-2/A. In cross-examination, he denied that the department had done tempering in the seniority list to remove the name of the petitioner. He admitted that he had not seen the muster rolls of the workers at the time of enquiry. He denied that he had tried to save the officials of the department in his enquiry.

13. RW-3 Shri Sanjay Kumar, HHC Police Station Shillai tendered in evidence the copy of FIR No. 71/2015 dated 10-11-2015 Ex. RW-3/A. In cross-examination, he stated that the investigation in the case is complete.

14. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner has failed to prove on record that he was engaged as daily wages labourer/beldar by the respondent. It was incumbent upon the petitioner to have prove by leading cogent and satisfactory evidence on record that he had worked with the respondent and had completed 240 days in preceding twelve calendar months prior to his alleged termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

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

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

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

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. No evidence to the contrary has been led by the petitioner to show that he had worked with the respondent and had completed 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. The AR for the petitioner next contended that the respondent had retained the juniors who are still working and besides this fresh persons have been engaged by the respondent as such the respondent had violated the provisions of section 25-G & 25-H of the Act. However, to prove the aforesaid contention no evidence has been led by the petitioner which could go to show that the respondent had retained his juniors and engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1-12-2011 by the respondent is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondent and against the petitioner.

Issue No. 2 :

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

Issue No. 3 :

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

Relief :

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

Announced in the open Court today on this 2nd day of November, 2018.

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

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

Ref No. 27 of 2012

Instituted on. 14-06-2012

Decided on 03-11-2018

Dalip Singh s/o Shri S. S. Thakur, Village Patti, P.O. Rissa, Tehsil Sarkaghat, Distt. Mandi, H.P. Through: J.C. Bhardwaj, President, H.P., AITUC, H.Q. Saproon Solan, H.P.

. .Petitioner.

Vs.

1. M/s Himachal Futuristic Communications Ltd. (Wire-line Division), electronics complex, Chambaghat, Solan, H.P.173213 through its Vice- President.

2. M/s Himachal Futuristic Communications Limited-8, commercial complex, Masjid Moth, Greater Kailash II, New Delhi-110048, through Deputy General Manager (HR).

. .Respondents.

Reference under section 10 of Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, A.R.

For respondents : Shri Rahul Mahajan, Advocate

AWARD

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

"Whether termination of services of Shri Dalip Singh S/o Shri S. S. Thakur, Village Patti, P.O. Rissa, Tehsil Sarkaghat, Distt. Mandi, H.P. through Shri J.C. Bhardwaj, President, HPAITUC, Hqs. Saproon, Solan, H.P.-172213 and the Dy. General Manager (H.R.) M/s Himachal Futuristic Communications Ltd. 8, commercial complex, Masjid Moth, Greater Kailash-11, New Delhi-1100048 w.e.f. 25-06-2008, without serving any charge sheet upon him, without holding an enquiry, without passing and conveying orders about his alleged misconduct against him about his alleged absenteeism, without giving advance notice and payment compensation and other legal dues etc., is legal & justified, if not, what amount of back wages, reinstatement w.e.f. 25-06-2008 at Chambaghat Plant/Factory of the company/above employer, seniority, past service benefits and compensation the above workers is entitled to from the above Employer/Management?"

2. Briefly, the case of the petitioner is that he was appointed as Electric Helper on 11-10-1995 as trainee and joined his duties on 11-10-1995, thereafter he was promoted as Operator on probation for a period of six months with effect from 12-4-1996 and his services were confirmed as Operator on 01-10-1996 and he remained continued on the said post till 26-04-2007 when his services were illegally and unlawfully transferred from the factory at Chambaghat, Solan to Head Office at New Delhi and further deputed to work on U.P. Western project in Uttarakhand and after completion of the said project he reported back at head office of the company at Delhi on 01-05-2008 and again on 28-05-2008 he was deputed to work on

other projects at Ajmer, Udaipur & Jaipur in Rajasthan and he was allowed to work on the above said projects up to 19-6-2008 and thereafter, he was asked to report back at head office at Delhi. When he reported back in the head office, he was orally told that his services are placed on the disposal of Solan plant at Chambaghat. The petitioner immediately rushed to Solan and reported at factory to Sh. Anil Sharma Asstt. Manager HR, but the Manager did not allow him to resume duties and asked for written orders from the head office. He again reported at head office Delhi, where he was pressurized to tender his resignation from service, but he refused to the submission of resignation and continuously remained visiting the head office as well as factory at Solan till 26-11-2008, when he was told by the respondents that his services had already been terminated with effect from 25-6-2008. The management at head office did not mark the presence of the petitioner nor issued any further order, therefore he made a written representation to the DGM (HRD) at head office New Delhi on 29-7-2008. His dues like TTA/DA of Rs. 51000/-, earned by him while working in the various projects had not been paid till today. The petitioner remained attending duties at head office Delhi till 26-11-2008, when he was told verbally that his services had already been placed at the disposal of Solan Plant of company. He also approached the factory authorities at Solan time and again, but he was not allowed resuming duties at Solan Plant at Chambaghat. On 26-11-2008 he was orally informed by the management that his services were terminated on 25-6-2008. He was also not paid his earned salary for those five months *i.e.* from July to 26th November, 2008 till he remained working at Delhi head office of the company. He had worked for more than 240 days during all those years of his service tenure and he had also worked for 240 days during the tenure of his service within 12 calendar months preceeding his termination. That the respondents have employed a new person in place of the applicant against the prescribed provisions of Section 25-G and 25-H of the I.D. Act and new hands were employed in contraventions of law. The respondents be directed to reinstate the petitioner in the employment of the company at Chambaghat with retrospective effect *i.e.* from the date of termination from the services *w.e.f.* 25-6-2008 with full back wages seniority, and with other consequential service benefits with costs throughout.

3. The respondents contested the claim of the petitioner by filing reply wherein preliminary objections had been taken *qua* suppression of material facts, jurisdiction, competence and maintainability. On merits, it has been admitted that the petitioner having been appointed as a Helper and thereafter promoted and confirmed as an Operator. He was transferred *vide* letter dated 26-4-2007 to New Delhi and he joined at Himachal Futuristic Communication Ltd., New Delhi. He was sent for further assignment to U.P. Project West Office, to Ajmer, Udaipur and Jaipur in Rajasthan. The petitioner intentionally and deliberately absented from duties *w.e.f.* 25-6-2008. He was asked verbally and in writing not to absent and be regular but he failed to adhere to the instructions of the officials. The petitioner has till date failed to report on duties. The demand notice has been raised by the petitioner without any jurisdiction as the petitioner has only right to raise the demand notice, if any, at Delhi. The petitioner is still on the roll of respondent No. 2 *i.e.* Himachal Futuristic Communications Ltd. 8, Commercial Complex Maszid Moth Greater Kailash-II, New Delhi-48 (Head Office) *i.e.* U.P. Project West Office and the services of the petitioner were never terminated. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner re-affirmed his allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues which were framed by my Ld. predecessor on 04-06-2013:

- (1) Whether the termination of the services of Shri Dalip Singh *w.e.f.* 25-6-2008 by the respondents without serving any charge sheet and without holding inquiry and without giving advance notice, is illegal, null and void 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 reference is neither competent nor maintainable as alleged? . .*OPR.*

Relief.

6. Besides having heard the AR for the petitioner and Learned Counsel for the respondents, I have also gone through the record of the case carefully.

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

Issue No. 1: Decided accordingly

Issue No. 2 : Decided accordingly

Issue No. 3 : Yes

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

REASONS FOR FINDINGS

Issue No. 3 :

8. Before proceeding to decide other issues, I will take up this issue for discussion first.

9. The AR for the petitioner contended that the petitioner was attending his duties at head office Delhi till 26-11-2008, when he was told verbally that his services had already been placed at the disposal of Solan Plant of company and thereafter he approached the factory authorities at Solan time and again, but he was not allowed to resume duties at Solan Plant at Chambaghat. He further contended that on 26-11-2008 he was orally informed by the management that his services were terminated on 25-6-2008 without serving any charge sheet upon him and without holding any enquiry despite the fact that he had worked for more than 240 days in each calendar year and 12 calendar months proceeding his termination.

10. On the other hand the Ld. Counsel for the respondents contended that this court has no jurisdiction to entertain the present dispute and the petitioner could not raise the demand notice under Section 2 A of the Industrial Disputes Act, 1947 before the Labour-cum-Conciliation Officer, Solan and could only have raised the demand notice before Labour-cum-Conciliation Officer, New Delhi as the petitioner was transferred from Himachal Futuristic Communications Ltd. Wire Lines Wireless Division, Electronic Complex Chambaghat, Solan to Himachal Futuristic Communications Ltd. 8, Commercial Complex Maszid Moth, Greater Kailash-II, New Delhi-48 (Head Office) in terms of the appointment letter and the standing orders of the company and only the Labour Commissioner, New Delhi/Secretary New Delhi could have the jurisdiction to refer the dispute, if any, to the Industrial Tribunal-cum-Labour

Court New Delhi, as the appropriate Government in the present case is the Government of Union Territory at New Delhi and not the Government of Himachal Pradesh. He further contented that the services of the petitioner were never terminated by the respondents and the petitioner had failed to report for duty after 25-6-2008 at Himachal Futuristic Communications Ltd, 8, Commercial Complex Maszid Moth, Greater Kailash-II New Delhi-48 (Head Office) *i.e.* U.P. Project West Office.

11. To prove his case, the petitioner stepped in to the witness box as PW-1 and deposed that he was appointed as Electronic Helper on 11-10-1995 *vide* letter Ex. P-1 and confirmed in October, 1996 by the respondent *vide* letter Ex. P-2 and thereafter he was appointed as an Operator. He further stated that he was transferred from Solan to Delhi *vide* letter Ex. P-3, and thereafter again he was transferred from Delhi to Meerut and then to Rajasthan and he was again sent back to Delhi on 1-05-2008. He further stated that he was not assigned any work at Delhi and his presence was also not marked at Delhi and after that he came to Solan and was sent back to Delhi. He also stated that at Solan and Delhi he was not assigned the work and he sent a letter Ex. P-4 to Deputy General Manager and a copy was also sent to Vice President who is also appointing authority of the petitioner. He further stated that no reply was received by him from the company and as such he raised the demand notice Ex. P-6. He has also sent the T.A. bills *vide* Ex. P-7. He stated that no charge sheet was issued to him, no inquiry was conducted against him and no compensation was given to him and was illegally terminated by the company. In cross examination he admitted that he was transferred *vide* letter Ex. P-3 and after that he had reported to G.M Projects, H.F.C.L & Commercial Complex, Maszid Motu, New Delhi on 1-5-2007. He denied that after the completion of project he had stopped to report at Head Office at Delhi. He denied that he was on the rolls of Delhi Head Office and his services had never been terminated.

12. On the other hand the respondents had examined one Shri S. K. Arora, s/o Shri Desh Raj Arora, Senior Vice-President (Works) with Himachal Futuristic Communications Limited 8, Electronic Complex, Chambaghat, District Solan, H.P as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply filed by the respondents. He also tendered in evidence copy of Board Resolution Ex. RW-1B, copy of appointment letter of the petitioner, Ex. RW-1/C, the copy of letter dated 12-8-1996, Ex. RW-1/D, copy of letter dated 1-10-1996 EX. RW-1/E, copy of increment letter Ex. RW-1/F, copy of letter, Ex. RW-1/G, copy of transfer letter dated 26-4-2007, Ex. RW- 1/H, the copies of letter dated 12-11-2008 Ex. RW-1/J & Ex. RW-1/K, copy of letter dated 5-01-2009, Mark X-1, copy of letter dated 6-2-2009 Ex. RW-1/L, copy of letter dated 23-10-2009 Mark X-2 and the copy of standing orders Mark-X-3. In cross examination he admitted that the Unit/Factory at Chambaghat is registered under the Factories Act and the Standing Orders have been certified. He denied that no worker can be transferred from the factory and the petitioner was not transferred but sent on deputation. He admitted that they had not issued any letter to the petitioner regarding his absence with in a period of two months from his absence. He denied that after 25-6-2008, they had terminated the services of the petitioner. He admitted that they had not issued any charge sheet nor conducted any inquiry. He also admitted that neither any notice was issued nor any compensation was paid to the petitioner.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof it has become clear that the petitioner was appointed by the respondents as a Helper and after that he was promoted and confirmed as an Operator. Thereafter he was transferred *vide* letter dated 26-4-2007 to New Delhi and he joined at Himachal Futuristic Communication Ltd., New Delhi and was sent for further assignment to U.P. Project West Office and then to Ajmer, Udaipur and Jaipur in Rajasthan and on 01-05-2008 he was again asked to report back at head office at New Delhi. However he absented from duties *w.e.f.* 25-6-2008 and till date he had failed to report for duties. The case of the petitioner is that he was allowed to work at

Ajmer, Udaipur & Jaipur in Rajasthan projects up to 19-6-2008 and thereafter he was again asked to report back at head office at New Delhi and when he reported back in the head office, he was orally told that his services were placed at the disposal of Solan plant at Chambaghat and he immediately rushed to Solan and reported at factory to Sh. Anil Sharma Asstt. Manager HR, but the Manager did not allow him to resume duties and asked him to get written orders from the head office. He again reported at head office Delhi, where he was pressurized to tender his resignation from service, but he refused to submit the resignation and continuously remained visiting the head office as well as factory at Solan till 26-11-2008, when he was told by the respondents that his services had already been terminated with effect from 25-6-2008. However except for the bald statement of the petitioner, no evidence has been led by him in this respect. No evidence has been led by the petitioner that he was told that his services were placed at the disposal of Solan plant at Chambaghat and the Manager did not allow him to resume duties at Chambaghat and asked him to get written orders from the head office where he was pressurized to tender his resignation from service. No termination order has been produced by the petitioner. Therefore in the absence of any cogent and satisfactory evidence on record, no credence can be attached to the testimony of the petitioner.

14. Now the first question which arises for consideration by this court is as to whether this court has the territorial jurisdiction to entertain the present reference and whether the petitioner could only have raised the demand notice before Labour-cum-Conciliation Officer New Delhi and could not have raised the demand notice under Section 2 A of the Industrial Disputes Act, 1947 before the Labour-cum-Conciliation Officer, Solan. The perusal of record reveals that the petitioner was transferred *vide* letter dated 26-4-2007 Ex.P-3 to New Delhi and he joined at Himachal Futuristic Communication Ltd., New Delhi and he was sent for further assignment to U.P. Project West Office and to Ajmer, Udaipur and Jaipur in Rajasthan and he was again sent back to New Delhi on 1-05-2008. In cross-examination he admitted that he was transferred from Solan to Delhi *vide* letter Ex. P-3, thereafter again he was transferred from Delhi to Meerut and then to Rajasthan and he was again sent back to Delhi on 1-05-2008. The perusal of record further reveals that he absented from duties *w.e.f.* 25-6-2008. Therefore it has become clear that pursuant to the transfer order passed as per the terms of his appointment letter, the petitioner had reported for duty at Head Office New Delhi. His transfer order is not in dispute nor a subject matter of challenge in any proceedings. The place where the petitioner was thus required to perform his duties on his transfer was at Head Office, New Delhi and he was sent for further assignment to U.P. Project West Office and then to Ajmer, Udaipur and Jaipur in Rajasthan and he was again sent back to New Delhi on 1-05-2008.

15. In the back drop of these admitted facts, I proceed to dispose of the present question of territorial jurisdiction. There is no dispute on the point that Industrial Disputes Act, 1947 does not contain any provision bearing on the question of territorial jurisdiction of the appropriate government. The Act does not deal with cause of action nor does it indicate what factors will confer jurisdiction on the court. It does not give the situs of occurrence of the cause of action as conferring territorial jurisdiction nor does it detail the factors restricting the jurisdiction of the government. Hence, this court has to fall back upon the judicial pronouncements of the superior courts wherein principles applicable for deciding the jurisdiction issue have been laid down.

16. In the case of Paritosh Kumar Pal *Vs.* State of Bihar, 1984 Labour Industrial Cases 1254, the Full Bench of Hon'ble Patna High Court held that situs of workman's employment in case of termination of his service is patently a paramount fact if not be wholly conclusive. It was further held that there has to be some nexus between the industrial dispute arising from termination of the service of the workman and the territory of the state before the court can assume jurisdiction. Lastly, it was held that the well known tests of the jurisdiction of civil

courts would be equally attracted in absence of any provision in the Act on the point. Applying these tests it is obvious that the situs of last employment after transfer is the decisive factor in the present case.

17. In **M/s DLF Universal Ltd. Vs. Govt. of NCT Delhi & Ors. 2002, LLR 407**, it was held by Hon'ble Supreme Court that the place where head office of the management is situated is not relevant for jurisdiction but the situs of employment where the workman actually work would determine the territorial jurisdiction.

18. In case of '**Siemens Ltd. Vs. AIT cum ALC Hyderabad and Anr. 2003, LLR 116**' also, it was held by Hon'ble Andhra Pradesh High Court that on transfer of workman, the situs of employment is paramount in raising the Industrial Dispute and it determines the jurisdiction.

19. In the present case the place of last employment of the petitioner was at New Delhi. It is merely an incidence of service that the petitioner was posted at New Delhi at the relevant time and as such he was controlled from the New Delhi office in the matter of leave, transfer, supervision, etc., and in these circumstances, the industrial dispute, if any, apparently arose at New Delhi and not in Himachal Pradesh and, I have, therefore, no hesitation in my mind to hold that the "Industrial Dispute" in the present case had actually arisen at New Delhi only. The law as laid down in the aforesaid judgments when applied to the facts of the present case leads to an irresistible conclusion that the Government of Himachal Pradesh did not have the territorial jurisdiction to make a reference under Section 10 of the Act and the Government of New Delhi only has the jurisdiction to make a reference to Labour Court for adjudication.

20. Hence, I hereby hold that this court has no territorial jurisdiction to entertain or decide the present claim petition/reference on merits and the same is not maintainable before this court. The issue is, accordingly, decided in favour of the respondents and against the petitioner.

Issues No. 1 & 2 :

21. Since I have held under issue no.3 that this court has no territorial jurisdiction to entertain or decide the present claim petition/reference on merits, therefore I refrain myself from giving any findings on the aforesaid issues. Hence, both these issues are decided accordingly.

Relief :

As a sequel to my findings on the aforesaid issues, the claim petition/reference is accordingly disposed of holding that this court has no territorial jurisdiction to entertain the same. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 3rd Day of November 2018 at Camp Court, Solan.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour
Court, Shimla, Camp Court at Solan.

30-11-2018

Present: None for the petitioner
Shri Prashant Singh, ADA for respondent No. 1
Shri Surinder Chauhan, Advocate for respondent No. 2

It is 10.30 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AGAIN

Present: None for the petitioner
Shri Prashant Singh, ADA for respondent No. 1
Shri Surinder Chauhan, Advocate for respondent No. 2

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

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AFTER LUNCH

Present: None for the petitioner.
Shri Prashant Singh, ADA for respondent No. 1.
Shri Surinder Chauhan, Advocate for respondent No. 2.

It is 3.50 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court. For today the case has been listed for the evidence of the petitioner but no evidence is present on behalf of the petitioner. The record reveals that the issues in this case have been framed on 23-4-2018 and thereafter the case was being listed for the evidence of the petitioner but despite having been availed seven opportunities, the petitioner has failed to lead any evidence which clearly shows that at present the petitioner is not interested to pursue his case. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether alleged termination of services of Shri Chunni Lal s/o Shri Molak Ram r/o Village Kanda, P.O Gumma, Tehsil & District Shimla H.P. during July, 1998 by the Executive Engineer, I&PH Sub Division No. II, Shimla-3 who had worked for 19 days only during 1998 and has raised his 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 the working period of 19 days

only 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?"

In support of his case, the petitioner has filed the claim petition averring therein that he was illegally terminated from service and prayed that the directions be issued to the respondents to re-instate him in service alongwith all consequential benefits including backwages.

By filing detailed reply, the respondents denied the averments made in the claim petition and prayed for the dismissal of the claim petition.

Thereafter, on the pleadings of the parties, the following issues were framed by this Court on 23-4-2018.

- (1) Whether the termination of the services of the petitioner by the respondents during July, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the petition is hit by delay and laches as alleged? . . .*OPR.*

Relief:

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

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

<i>Issue No. 1</i>	No
<i>Issue No. 2</i>	Becomes redundant
<i>Issue No. 3</i>	Not pressed
<i>Relief</i>	Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1.

To prove issue No. 1, various opportunities have been granted to the petitioner to lead his evidence but despite having availed seven opportunities, the petitioner has failed to lead any evidence. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally during July, 1998 without complying with the provisions of Industrial Disputes Act, 1947. From the aforesaid reference it is also clear that the petitioner had worked only for 19 days with the respondents during the year, 1998 and had raised the present dispute after 14 years. The perusal of record further shows that as many as seven opportunities have been granted to the petitioner for leading evidence but despite that the

petitioner has failed to lead any evidence and to place any material on record in order to prove his case which clearly shows that the petitioner is not interested to pursue his case. Therefore, in the absence of any evidence on record, it cannot be said that the termination of the services of the petitioner by the respondents during July, 1998 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified. Hence, issue No. 1 is decided against the petitioner and in favour of the respondents.

Issue No. 2 :

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

Issue No. 3 :

In support of this issue, it has been stated by the learned counsel for the respondents that since the petitioner has failed to lead any evidence in support of issue No. 1, hence at this stage, they do not want to press this issue. Accordingly, this issue is decided as not pressed.

Relief :

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

Announced:
30-11-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

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

Ref. No. 98 of 2017

Instituted on 9-6-2017

Decided on 30-11-2018

Karnail Singh s/o Shri Gurnam Singh, r/o Village Nagal Suketi, Kala Amb, Tehsil Nahan, District Sirmaur, H.P. . .*Petitioner.*

M/s Symbiosis Pharma (P) Ltd., Nagal Suketi, Kala Amb, Tehsil Nahan, District Sirmaur, HP. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Vijay Sharma, Advocate
For respondent : Shri Praveen Chandel, Advocate

AWARD

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

"Whether termination of services of Shri Karnail Singh s/o Shri Gurnam Singh, Village Nagal Suketi, Kala Amb, Tehsil Nahan, District sirmaur, H.P. by the management of M/s Symbosis Pharma Pvt. Ltd., Nagal Suketi, Kala Amb, Tehsil Nahan, District Sirmaur, H.P. w.e.f. 17-6-2016 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Briefly, the case of the petitioner is that he was appointed as a helper with the respondent company since December, 2010 and he was discharging his duties diligently and on 17-6-2016 the petitioner had went to report to the unit but he was not permitted to enter the gate of the unit and on the instructions of the management the security guard deployed by the company did not permit him to enter the unit. It is further averred that the petitioner had tried his level best to find as to what could be the possible reason for such illegal and arbitrary action of the respondent as during the course of service with the respondent the petitioner had never indulged in any such activity which would have entailed any action against him but despite several attempts to the meet the authorities of the respondent management, he was not permitted to enter the premises of the unit and thereafter *vide* letter dated 21-6-2016, he informed the Labour Officer about his illegal termination. It is also averted that the petitioner has not been paid his share of benefits for the period he was working with the respondent and he has also not been paid the amount of gratuity, bonus, leave encashment and amount of PF. That the salary for the month of June, 2016 has also not been paid to the petitioner. Against this back-drop it has been prayed that the petitioner be awarded the amount due and payable to him under the various heads.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition is misconceived and bereft of any substance, that the petitioner has not come to the Court with clean hands, suppression of material facts etc. On merits, it has been asserted that the petitioner was appointed as helper in the month of Jan., 2013. It is denied that the services of the petitioner were illegally terminated. It is asserted that the petitioner is not entitled for any kind of service benefits including gratuity as he has worked for a period of three years only and he has already withdrawn the Provident Fund. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner re-affirmed her allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed by this Court on 11-7-2018 :—

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 17-6-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*

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

(3) Relief

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

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

Issue No. 1

Issue No. 2

Relief: Reference answered in favour of the per operative part of award

REASONS FOR FINDINGS

Issues No. 1 :

8. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and his services had been terminated by the respondents on the false allegations illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondents and even the respondents had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand learned ADA for the respondents contended that the termination of the petitioner was come to happen on the basis of the legal action meted out by the Police Department after leveling charges against her under various sections of IPC and she remained under judicial custody for more than 48 hours, hence, the respondents left with no uncertainty but to terminate her from service.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence termination letter Ex. PW-1/B, demand notice Ex. PW-1/C and copy of letter dated 9-10-2017 issued by Labour Officer Ex. PW-1/D and stated that no Court has ever convicted him. In cross-examination, he admitted that he was engaged as daily wage sweeper from the year, 2016. he further admitted that he remained absent from duty on 11-7-2017. He also admitted that on 12-7-2017, the police had informed the office that she was arrested in case FIR No. 91/2017 under section 366, 370-A (2), 376, 377, 506, 34 IPC at PS Nahan. He admitted that his services were terminated on 18-8-2017 by the Director Health Services on the ground that he remained in custody for 48 hours. He denied that on 24-8-2017, the Medical Officer CHC Nohradhar had conveyed the termination order to him. He admitted that she had written a letter dated 9-8-2017 Mark R-1 to BMO Sangrah alongwith copy of his bail order Mark R-2. He further admitted that he remained in custody for about 24 hours. He also admitted that the case pertaining to FIR No. 91/2017 is still pending in the Court.

11. On the other hand the respondent examined Dr. Aseem Kaushik as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter Ex. RW-1/B, copy of FIR Ex.

RW-1/C, information written by him to PS Nauradhar regarding petitioner Ex. RW-1/D and the copy of bail order passed by the Ld. Additional Sessions Judge, Sirmaur at Nahan in favour of petitioner Ex. RW-1/E, copy of office order dated 20-8-2017 Ex. RW-1/F and office order dated 18-8-2017 Ex. RW-1/G. In cross-examination, he admitted that the petitioner was engaged as a part time sweeper on 21-5-2007 and he started working on daily wages basis *w.e.f.* 1-11-2016. He further admitted that the petitioner had worked continuously. He also admitted that the petitioner had completed 240 days in preceding twelve calendar months from the date of his termination. He admitted that neither any show cause notice was issued to the petitioner nor any enquiry was conducted against him period to her termination. He further admitted that the petitioner used to visit their office after his termination for his reinstatement. He denied that the services of the petitioner were terminated illegally. He admitted that juniors of the petitioner are still working with the department. He further admitted that after the termination of the services of the petitioner Ravinder Singh has been appointed as daily wager in their office. He also admitted that office orders Ex. RW-1/F and Ex. RW-1/G were not sent to the petitioner.

12. Before, I proceed further it is important to mention here that the petitioner has directly filed the application before this Court under section 2-A of the Act but after some time on the same cause of action the appropriate government has referred the dispute under reference to this Court and thereafter *vide* order dated 23-10-2018, the application was clubbed with the reference.

13. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner was engaged as part time sweeper by the respondents on 21-5-2007 and thereafter *w.e.f.* 1-11-2016, he had worked as daily waged sweeper with the respondents. It is the admitted case of the parties that the petitioner had worked continuously with the respondents and had completed 240 days in twelve calendar months prior to his termination. It is also the admitted case of the parties that the services of the petitioner were terminated *w.e.f.* 18-8-2017 on the ground that he was arrested by the Police in case FIR No. 91/2017 under section 366, 370-A (2), 376, 377, 506, 34 IPC at PS Nahan and remained in judicial custody for 48 hours. It is also clear from the record that the services of the petitioner were terminated without serving any chargesheet and without holding any enquiry. Now, the question which arises for consideration before this Court is as to whether the action of the respondents was illegal and unjustified in terminating the services of the petitioner without holding any domestic enquiry and without following the principles of natural justice. It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. In **D. K. Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments-221**, the Hon'ble Apex Court has held as under:

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In a judgment given by our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

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

9.

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

11.

12.

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

However, in the instant case, neither any show cause notice nor any chargesheet was issued to the petitioner before terminating him from service. No explanation was called for from him and no domestic enquiry was conducted against him to provide the opportunity of being heard to him in flagrant violation of the principles of natural justice. The petitioner had worked continuously with the respondents and had completed 240 days in each calendar year and in preceding 12 months before his termination. Therefore, it was incumbent upon the respondents to have conducted the enquiry against the petitioner prior to his termination. However, no enquiry was held before terminating his services. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. It is also clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor he was paid any compensation in lieu thereof. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which laid down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

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

14. In the instant case also as observed aforesaid, the respondents have failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, in view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 18-8-2017 by the respondents without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. The learned counsel of the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained her juniors who are still working and also had engaged fresh hands as such the respondents had violated the principles of "last come first go". It has been admitted by RW-1 in his cross-examination that juniors to the petitioner are still working with the department and after the termination of the services of the petitioner, Ravinder Singh has been appointed as daily wager in their office. Thus, from the evidence, on record, it has been established that after the termination of the services of the petitioner, junior persons have been retained and fresh hands have been engaged by the respondents without giving an opportunity to the petitioner for re-employment, which is clear cut violation of sections 25-G & 25-H of the Act.

16. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 18-8-2017, by the respondents without complying with the provisions of the Act, is illegal and unjustified. Accordingly issue no.1 is decided in favour of the petitioner and against the respondents.

Issue No. 2 :

17. Since, I have held under issue No. 1 above that the termination of the services of the petitioner by the respondents *w.e.f.* 17-8-2017 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

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

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

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

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

Issue No. 3 :

21. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is neither competent nor maintainable especially when the petitioner has filed the present petition pursuant to the demand notice raised by him before the Conciliation Officer and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is neither competent nor maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief :

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

Announced in the open Court today on this 29th Day of November, 2018.

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

14-11-2018

Present: None for the petitioner union
Shri Prateek Kumar, Advocate *Vice Csl.* for respondent

It is 10.55A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner union
Shri Prateek Kumar, Advocate *Vice Csl.* for respondent

It is 12.55 P.M. Case called again but none appeared on behalf of the petitioner before this Court. Be called after lunch.

Sd/-
Presiding Judge,
Labour Court, Shimla

CASE CALLED AFTER LUNCH

Present: None for the petitioner union
Shri Prateek Kumar, Advocate *Vice* Csl. For respondent

Case called repeatedly in pre and post lunch sessions. It is 3.35 PM but neither the representative of the petitioner union nor its Advocate appeared before this Court despite the fact that on the previous date of hearing Shri Vijay Sharma, Advocate had appeared on behalf of petitioner union. For today, the case has been listed for the evidence of the petitioner union but none appeared on behalf of the petitioner union which clearly shows that at present the petitioner union is not interested to pursue its case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

1. **"Whether the demands raised by the General Secretary, JP Workers Union (INTUC) Karchham Wangtu & Baspa-II, Village Sholtu, P.O. Tapri, Tehsil Nichar, District Kinnaur, HP vide demand notice dated 3-9-2016 (copy enclosed) are legal and justified? If yes, what service/monetary benefits, the workmen working in the Karchham Wangtu & Baspa-II Hydro Electric Projects are entitled to from the employer M/s Himachal Baspa Power Company Ltd., Village Sholtu, P.O Tapri, Tehsil Nichar, District Kinnaur HP?"**
2. **Whether non-fulfillment of the demands of the JP Workers Union (INTUC) Karchham Wangtu & Baspa-II, Village Sholtu, P.O Tapri, Tehsil Nichar, District Kinnaur, HP is legal and justified? If not, what service/monetary benefits the workmen are entitled to from the above employer/management?"**

In support of the aforesaid reference, the claim petition has been filed by the petitioner union on 16-1-2018 wherein it has been prayed that the respondent be directed to release the PLI to all the staff equally @ 50% of the basic salary/wages, all the workers working with the company be either provided with the company residential accommodation or in alternate HRA @ Rs. 2500/- per month be paid to all the workers so that every workmen could arrange accommodation within the vicinity of the project to manage the work during night shifts, respondent company be directed to formulate a policy for regularization of the workmen working with the company since long and further a regularization policy be framed for the workers who have been engaged as per MOU and the management of respondent be directed to revise wages/salary/pay of the workers working with the company since long.

By filing reply, the respondent contested the claim of the petitioner union and has prayed for the dismissal of the claim petition.

The following issues were framed by this Court on 26-9-2018.

- (1) Whether the demands raised by the petitioner's union *vide* demand notice dated 3-9-2016 are legal and justified? ..*OPP.*
- (2) If issue No. 1 is proved in affirmative to what relief of service/monetary benefits the workmen are entitled? ..*OPP.*
- (3) Whether the non fulfilment of the demands of the petitioner's union by the respondent is legal and unjustified? ..*OPP.*

Whether the claim petition is neither competent nor maintainable? ..*OPR.*

5. Relief :

Issues No. 1 to 3 :

In support of the aforesaid issues, the petitioner's union was allowed to lead its evidence but despite having availed opportunity in order to lead the evidence, none appeared on its behalf which clearly shows that at present the petitioner union is not interested to pursue its case arising out of the reference. There is also no material/evidence on record/file which could go to show that the demands raised by the petitioners' union *vide* demand notice dated 3-9-2016 are legal and justified and the non fulfilment of the demands of the petitioner's union by the respondent is illegal and unjustified. Hence, in the absence of any material/evidence on record, this Court is left with no other alternative but to answer these issues against the petitioner and accordingly issues No. 1 to 3 are answered against the petitioner union.

Issue No. 4 :

In support of this issue, it has been stated by the learned vice counsel for the respondent that since the petitioner union failed to lead any evidence on issues No. 1 to 3, hence, the respondent does not want to lead any evidence in support of issue No. 4. Therefore, in the absence of any evidence this issue is answered against the respondent.

Relief :

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

Announced:
14-11-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

14-11-2018

Present: None for the petitioner
 Shri Mahinder Singh, ADA for respondents No. 1 and 2
 None for respondent No. 3

It is 10.50 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AGAIN

Present: None for the petitioner
Shri Mahinder Singh, ADA for respondents No. 1 and 2
None for respondent No. 3

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

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AFTER LUNCH

Present: None for the petitioner
Shri Mahinder Singh, ADA for respondents No. 1 and 2
None for respondent No. 3

Case called repeatedly in pre and post lunch sessions. It is 3.30 PM but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date of hearing Shri Kamal Kumar, Advocate had appeared on behalf of petitioner. For today, the case has been listed for the service of respondent No. 3 but despite direction the petitioner had not filed PF and RAD cover and even failed to appear before this Court, which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether termination of the services of Smt. Skina Devi r/o Sharma Niwas, Set No. 6, New Flowerdale, Chotta Shimla, Shimla-2, H.P. who had worked as cook-cum-helper, by (1) The Block Primary Education Officer, Mayfield, P.O A.G Office Shimla 171003 (2) The Centre Head Teacher, Government Primany School Portmore Shimla-171002, H.P. (3) Pradhan, School Management Committee, GPS Portmore, Shimla 171002 w.e.f. 1-7-2013 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

From the aforesaid reference, it is clear that the petitioner has alleged her termination *w.e.f.* 1-7-2013 to be illegal and unjustified but for today she has failed to appear before this Court which clearly shows that at present she is not interested to pursue her case. There is also no material on record/file which could go to show that the services of the petitioner have been terminated illegally by the respondents *w.e.f.* 1-7-2013. Hence, in the absence of any material on record, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
14-11-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

30-11-2018

Present: None for the petitioner
Shri Prashant Singh, ADA for respondent No. 1
Shri Surinder Chauhan, Advocate for respondent No. 2

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

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner
Shri Prashant Singh, ADA for respondent No. 1
Shri Surinder Chauhan, Advocate for respondent No. 2

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

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AFTER LUNCH

Present: None for the petitioner.
Shri Prashant Singh, ADA for respondent No. 1
Shri Surinder Chauhan, Advocate for respondent No. 2

It is 3.55 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court. For today the case has been listed for the evidence of the petitioner but no evidence is present on behalf of the petitioner. The record reveals that the issues in this case have been framed on 23-4-2018 and thereafter the case was being listed for the evidence of the petitioner but despite having been availed seven opportunities, the petitioner has failed to lead any evidence which clearly shows that at present the petitioner is not interested to pursue his case. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether alleged termination of services of Shri Jai Singh s/o Shri Laxmi Singh, V.P.O Gumma, Tehsil & District Shimla, HP during November, 1998 by the Executive Engineer, I&PH Sub Division No. II, Shimla-3 who had worked for 80 days only during 1998 and has raised his 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 the working period of 80 days only 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?"

In support of his case, the petitioner has filed the claim petition averring therein that he was illegally terminated from service and prayed that the directions be issued to the respondents to re-instate him in service alongwith all consequential benefits including backwages.

By filing detailed reply, the respondents denied the averments made in the claim petition and prayed for the dismissal of the claim petition.

Thereafter, on the pleadings of the parties, the following issues were framed by this Court on 23-4-2018 :—

- (1) Whether the termination of the services of the petitioner by the respondents during November, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the petition is hit by delay and laches as alleged? . . .*OPR.*

Relief :

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : Not pressed

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

REASONS FOR FINDINGS

Issues No.1 :

To prove issue No. 1, various opportunities have been granted to the petitioner to lead his evidence but despite having availed seven opportunities, the petitioner has failed to lead any evidence. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally during November, 1998 without complying with the provisions of Industrial Disputes Act, 1947. From the aforesaid reference it is also clear that the petitioner had worked only for 80 days with the respondents during the year, 1998 and had raised the present dispute after 14 years. The perusal of record further shows that as many as seven opportunities have been granted to the petitioner for leading evidence but despite that the petitioner has failed to lead any evidence and to place any material on record in order to prove his case which clearly shows that the petitioner is not interested to pursue his case. Therefore, in the absence of any evidence on record, it cannot be said that the termination of the services of the petitioner by the respondents during November, 1998 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified. Hence, issue No. 1 is decided against the petitioner and in favour of the respondents.

Issue No. 2 :

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

Issue No. 3 :

In support of this issue, it has been stated by the learned counsel for the respondents that since the petitioner has failed to lead any evidence in support of issue No. 1, hence at this stage, they do not want to press this issue. Accordingly, this issue is decided as not pressed.

Relief:

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

Announced:
30-11-2018.

(SUSHIL KUKREJA),

Sd/-
Presiding Judge,
Labour Court, Shimla.

22-11-2018

Present: Petitioner S/Sh. Shailender Kumar, Bittu, Suresh Kumar, Yamin Ali, Sunil Kumar, Panch Ram, Manga Ram, Mushtaq Ali, Gurmeet Kaur w/o Late Sh. Chander Shekhar in person with Ms. Kusum Lata, Advocate for the petitioners.

Sh. S. Kaushal, AR for respondent

At this stage it has been stated by the petitioners S/Shri Shailender Kumar, Bittu, Suresh Kumar, Yamin Ali, Sunil Kumar, Panch Ram, Manga Ram, Mushtaq Ali, Gurmeet Kaur w/o Late Sh. Chander Shekhar and Ms. Kusum Lata, Advocate on behalf of the petitioner Sh. Ashish Kumar that they had entered into a compromise with the respondent company. They further stated that they were not the employees of the respondent company, however, they are ready to accept Rs. 30,000/- each as an ex-gratia amount in full & final settlement of their claim petitions arising out of the reference no. 6/2013 and now they shall have no claim against the respondent company. To this effect their statements recorded separately.

Vide separate statement recorded today, it has been stated by Sh. S. Kaushal AR for the respondent company that all the aforesaid petitioners have entered into a compromise with the respondent company. He further stated that although they were not the employees of the respondent company but in order to resolve the issue finally, the respondent company is ready to pay a sum of Rs. 30,000/- (Rs. Thirty Thousand only) to each of the aforesaid persons as an ex-gratia amount in full & final settlement of their claim petitions arising out of reference No. 6/2013 which shall be paid to them within a period of one month from today.

Therefore, in view of the aforesaid statements of the petitioners and their Learned Counsel Ms. Kusum Lata Advocate as well as Sh. S. Kaushal, AR for the respondent, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of their statements which shall form a part of this award/order. The respondent company is directed to pay the amount of Rs. 30,000/- (Rs. Thirty Thousand only) to each of the petitioners S/Shri Shailender Kumar, Bittu, Suresh Kumar, Yamin Ali, Sunil Kumar, Panch Ram, Manga Ram, Mushtaq Ali and Ashish Kumar within a period of one month from today failing which the same shall carry interest @ 9% per annum from the date of award till its realization. The amount of Rs. 30,000/- which has been awarded to the LR's of the petitioner late Sh. Chander Shekhar, a sum of Rs. 20,000/- shall be paid to his wife Smt. Gurmeet Kaur. It is further directed that a sum of Rs. 5,000/- each shall be paid to his minor sons Rishav and Aditya which shall be kept in the form of fixed deposit and shall be released in their favour after their attaining the age of majority. Therefore, the reference *qua* all the aforesaid petitioners is decided as compromised accordingly.

It may be pertinent to mention here that the appropriate government has sent the present reference *qua* 16 workers out of which only the aforesaid ten workers have filed the claim petitions. However, the other workers namely S/Shri Puran Singh, Vijay Kumar, Sher Jung, Ashraf Ali, Dinesh Kumar and Rakesh Kumar have failed to file any claim petition and to place any record/material in support of their case which shows that they are not interested to pursue their case. Hence, in the absence of any material on record, the reference *qua* the aforesaid petitioners is decided against them. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

22-11-2018

Sd/-

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

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

Ref. No. 112 of 2017

Instituted on 10-7-2017

Decided on 19-12-2018

Devi Ram s/o Shri Tika Ram, r/o Village Jander, P.O. Basantpur, Teshil Sunni, Distict Shimla, H.P. . *Petitioner.*

Versus

1. The Divisional Forest Officer, Shimla (Rural), Khalini, Shimla-2, H.P.
2. Additional Chief Secretary (Forest), Shimla-2, H.P.
3. Principal Chief Conservator of Forest , H.P. (HOFF), Shimla-1, H.P.
4. Range Forest Officer, Forest Division Forest Range, Forest Sunni, District Shimla, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Prakash Chand, Advocate

For respondents: Shri H. N. Kashyap, ADA

AWARD

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

"Whether termination of services of Shri Devi Ram s/o Shri Tika Ram Village Jander, P.O. Basantpur, Tehsil Sunni, District Shimla, H.P. during April, 2016 by the Divisional Forest Officer, Forest Division Shimla, District Shimla, H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In nutshell, the case of petitioner is that since 1997, he was engaged in Forest Department as daily wager worker at Barmain Beat (Basantpur), Forest Beat Sunni and he had been given deliberately fictional breaks and his services were terminated orally in November, 2016 without complying with the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) despite the fact that he had completed 240 days in twelve calendar months preceding his termination. It is further averred that the respondents deliberately terminated the services of the petitioner whereas he had worked regularly in the department and even few persons namely Om Prakash and Nek Ram are working regularly and the respondents are not giving fictional breaks to them. It is also averred that the persons junior to the petitioner S/Shri Ram Singh, Gagan, Yog Raj, Nek Chand, Surender and Roop Dass are still working with the department whereas the services of the petitioner were orally terminated.

Against this back-drop it has been prayed that the oral termination of the petitioner *w.e.f.* November, 2016 be quashed and the respondents be directed to re-engage the petitioner at the same place in the same capacity in which he was working at the time of his oral termination with full back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objection regarding maintainability, that the petitioner used to leave the work at his own etc. have been taken. On merits, it has been asserted that the petitioner was initially engaged as casual labourer during the year, 2009 to carry out the seasonal forestry works in Bhajji Range of Shimla Forest Division and he had never completed 240 days in any of the calendar year and he had worked only for 86 days in the year, 2009, 213 days in the year, 2010 and 105 days in the year, 2011 and thereafter he was engaged on bill basis as per availability of work/funds and since the petitioner had not completed 240 days in any calendar year right from his initial engagement, hence, he is not entitled for regularization as per the policy of Government. It is further asserted that the petitioner used to leave the work at his own sweet will after the completion of work assigned to him along-with other workers and the respondent department had never terminated his services. It is also asserted that no artificial/fictional breaks were given to the petitioner by the respondent and the services of Shri Nek Ram & Om Prakash have been retained as per the award passed by this Court during 2014 and since the services of the petitioner were never terminated by the respondent, hence, the question of notice under section 25-F of the Act does not arise. The respondent prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed by this Court on 13-3-2018.

- (1) Whether the termination of the services of the petitioner by the respondent during April, 2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the petition is not maintainable as alleged? . . .*OPR.*

Relief.

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : No

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

REASONS FOR FINDINGS

Issue No. 1 :

8. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondent and even the respondents had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

9. On the other hand, the learned ADA for respondents contended that the services of the petitioner were never terminated by the respondents department, who used to leave the work at his own sweet will. He further contended that neither the petitioner had completed 240 days in any calendar year nor the department had retained his juniors and engaged fresh hands, hence, the respondents are not bound to comply with the provisions of the Act.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of demand notice Ex. PW-1/B along-with its postal receipts Ex. PW-1/C-1 to Ex. PW-1/C-5. In cross-examination, he denied that he was engaged in the year, 2009. He further denied that he had not completed 240 days in any calendar year as such his services have not been regularized. He also denied that he had left the job at his own and the department had never terminated his services. He denied that he had been paid all his earned wages. He admitted that he had been working on bill basis till 31-8-2018. He denied that no junior persons have been retained by the department. He further denied that the department had not violated any provision of I.D Act.

11. On the other hand, the respondents have examined one Shri Hari Saran, Range Officer, Forest Range, Bhajji as RW-1 who deposed that *vide* authority letter Ex. RW- 1/A, he has been authorized to depose before this Court and tendered in evidence his affidavit Ex. RW-1/B wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/C and copy of bills Ex. RW-1/D to Ex. RW-1/L. In cross-examination, he admitted that Om Prakash and Nek Ram are still working in their department as per the direction of this Court. He denied that Om Prakash and Nek Ram are juniors to the petitioner. He admitted that the petitioner was working with the respondents since the year, 1998. He further admitted that no termination letter was given to the petitioner. He denied that the petitioner had completed 240 days in each calendar year. He admitted that Sita Devi has been regularized by the department who is junior to the petitioner but volunteered that she was appointed on compassionate grounds as her husband who was working with the department had gone missing.

12. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner is still working with the respondents on bill basis. No doubt, the case of the petitioner is that in the year, 1997, he was engaged as daily wager worker by the respondents but to prove this fact no cogent and satisfactory evidence has been led by him which could go to show that he was engaged by the respondents in the year, 1997. It has also become clear that the petitioner had worked with the respondents on the basis of muster roll *w.e.f.* the year, 2009 and worked as such till the year, 2011 as is evident from the mandays chart Ex. RW-1/C. The perusal of mandays chart Ex. RW-1/C goes to show that the petitioner had worked for 86 days in the year, 2009, 213 days in the year, 2010 and 105 days in the year, 2011 and thereafter he had been engaged on bill basis as per the availability of works/funds.

Thus, it is clear from the mandays chart Ex. RW-1/C, that the petitioner had not completed 240 days in any calendar year and he has failed to prove on record that he had worked for 240 days in each calendar year and in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

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

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

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

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

13. The learned counsel for the petitioner next contended that the respondents had retained the juniors namely Om Prakash and Nek Ram who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the provisions of section 25-G & 25-H of the Act. However, in his cross-examination RW-1 categorically denied that the Om Prakash and Nek Ram are juniors to the petitioner. He admitted in cross-examination that Sita Devi has been regularized by the department who is junior to the petitioner but volunteered that she was engaged on compassionate ground as her husband who was working with the department had gone missing. No evidence to the contrary has been led by the petitioner in order to show that Om Prakash and Nek Ram are juniors to him and Sita Devi was not engaged on compassionate ground. The petitioner cannot claim equal treatment with Sita Devi who was engaged on compassionate ground. In fact, no cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him and had also engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

14. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner during April, 2016 by the respondents is not illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the respondents and against the petitioner.

Issue No. 2 :

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

Issue No. 3 :

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

Relief :

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

Announced in the open Court today on this 19th Day of December, 2018.

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

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

Ref. No. 60 of 2015

Instituted on 24-9-2015

Decided on 15-12-2018

Amit Mehta s/o Shri Gian Chand Mehta, r/o Village-Kholighat, P.O. Jahoo, Tehsil Nankhari, Distt. Shimla, H.P. . *Petitioner.*

M/s Ranbaxy Laboratory Ltd. Village-Kholighat, P.O. Jahoo, Tehsil Nankhari, Distt. Shimla, HP. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Tek Chand, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

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

"Whether termination of the services of Shri Amit Mehta s/o Shri Gian Chand Mehta employed as Consultant, r/o Village-Kholighat, P.O. Jahoo, Tehsil Nankhari, Distt. Shimla, H.P. during November, 2013 by the management of M/s Ranbaxy Laboratory Ltd. Village-Ganguwal, Paonta Sahib, Distt. Sirmaur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by workman, is legal and justified? If not, to what relief of reinstatement & compensation the above aggrieved workman is entitled to from the above management?"

2. Briefly, the case of petitioner is that in the year, 2001, he was appointed as trainee by the respondent company and was confirmed in the year, 2002 and thereafter on 30-4-2011, he was transferred by the company in Global Material Sources Department for a period of one year and then he gave written option *vide* representation dated 2-1-2014 for joining as consultant with respondent company but the respondent company with a view to deprive the justified claim of the petitioner firstly allured him to resign from the earlier job and assured to give fresh job on higher post *vide* letter dated 30-4-2011 which was renewed on 1-5-2013. That the respondent company had transferred the services of the petitioner to M/s Tech Planet which was its subsidiary and part and parcel of the respondent just to deprive the petitioner of his legitimate claim of service from the company and even the salary/wages of the petitioner were being paid by the respondent company during the year, 2011 to 2012. The services of the petitioner were continuous for the purpose of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as he had worked for more than 240 days in each calendar year with the respondent and his services have been terminated without following proper procedure and giving any opportunity of being heard as no enquiry was conducted against him which is in contravention of the provisions of Model Standing Orders and section 25-N of the Act. That due to illegal termination and giving new job on transfer after taking illegal resignation from the petitioner, his life has become miserable and stigmatic due to which he is not able to get new job. Against this back-drop it has been prayed that the respondent be directed to re-engage the services of the petitioner as consultant alongwith backwages and all the consequential benefits and special compensation for causing immense mental harassment and agony.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition filed by the petitioner is neither competent nor maintainable, that the petitioner had resigned from his service on 29-3-2011 and was relieved on 30-4-2011 and the petitioner is not a workman under section 2(s) of the Act, that the petitioner had accepted his full & final settlement, that the petition is bad for non-joinder of necessary parties and the petitioner is gainfully employed after submitting his resignation. On merits, it has been asserted that the petitioner was engaged as a trainee in the year, 2001 and confirmed in the year 2002. It is further asserted that there is no employer and employee relationship between the respondent and the petitioner and even the petitioner is not a workman under section 2-S of the Act. The services of the petitioner were never dismissed, retrenched and terminated but he himself had resigned from the service of the respondent *vide* letter dated 29-4-2011 and took his full and final settlement and gratuity and withdrew his provident fund benefits and the petitioner was relieved on 30-4-2011. It is also asserted that the petitioner was offered post as a consultant in global Material Sourcing Department for one year *vide* letter dated 30-4-2011 and the terms and conditions for the appointment of petitioner as consultant were incorporated in letter dated 2-5-2011 but the petitioner in terms of letters dated 30-4-2011 and 2-5-2011 had never

joined as consultant in Global Material Sourcing Department rather he had applied for job with M/s Tech. Planet (contractor) and the petitioner *w.e.f.* 1-5-2011 was an employee of M/s Tech. Planet and the letter dated 1-5-2012 allegedly issued by the respondent company is denied as the same is fabricated and manufactured. That the M/s Tech. Planet is a licence contractor and has a licence to deploy the employees as per the provisions of Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred as to Contract Labour Act) and the respondent has a valid registration to employ the contractor's employees as per the provisions of the Contract Labour Act. It is asserted that the consultant is not a workman and does not fall under the definition of section 2-S of the Act and the entire control and supervision of the petitioner was of M/s Tech. Planet (contractor) as the payment of ESI, EPF contribution, compliance of labour law, payment of salary etc., was being made by the M/s Tech. Planet towards petitioner after 1-5-2011, hence, there is no relationship of employer and employee between the respondent and petitioner and there is no violation of sections 25-F, 25-N of the Act as *w.e.f.* 30-4-2011, the petitioner was not an employee of the respondent. The respondent prayed for the dismissal of the claim petition.

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

5. On the pleadings of the parties, the following issues were framed by this Court on 1-8-2016.

- (1) Whether the termination of the services of the petitioner during November, 2013 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the petition is neither competent nor maintainable as alleged? . . .*OPR.*
- (4) Whether the petition is bad for non-joinder of necessary parties as alleged? . . .*OPR.*

Relief.

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

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

Issue No. 1 : No.

Issue No. 2 : Becomes redundant.

Issue No. 3 : No.

Issue No. 4 : Yes.

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

REASONS FOR FINDINGS

Issues No. 1 & 4 :

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

9. The learned counsel for the petitioner contended that the petitioner was the employee of the respondent as consultant and his services have been illegally terminated by the respondent in violation of the provisions of the Act.

10. On the other hand, the learned counsel for respondent contended that the petitioner was never appointed as consultant by the respondent company and he was the employee of M/s Tech. Planet. He further contended that there is no relationship of employer and employee between the petitioner and the respondent.

11. To prove his case, the petitioner appeared into the witness box as PW-1 to depose that he was the employee of the respondent company and he was a trainee during the year, 2001 and his services were confirmed in the year, 2002. He further deposed that the respondent company gave him allurements that in case he resign from the company, the respondent company will give him another job on higher wages as such he resigned from the services on 30-4-2011 and the respondent company had issued him appointment letter Ex. PW- 1/A and re-engaged him as a consultant. He also deposed that *vide* letter Ex. PW-1/B, his services were further extended and he was doing the office work like photocopying, typing, follow up etc. He further stated that he had completed 240 days in a calendar year and he never remained under the employment of any contractor and his salary *w.e.f.* 1-5-2011 was being paid by the respondent company by remitting the same in his bank account and after six months the respondent company used to pay him the salary through contractor in the same bank account. He deposed that his services were orally terminated in the month of November, 2013 and he is not gainfully employed anywhere after his termination. In cross-examination he admitted that Ex. RA is the copy of demand notice raised by him to which reply Ex. RB was filed by the respondent. He denied that after his resignation on 30-4-2011, the respondent company offered him the post of consultant in Global Material Sourcing department but he did not join there and joined with different company. He admitted that he had filled up the form Ex. RC. He denied that M/s Tech. Planet had given him the appointment letter Mark R-1 on 1-5-2011 and he had accepted its terms and conditions. He admitted that Tech. Planet had given him the appointment for a period of one year *w.e.f.* 1-5-2011 to 30-4-2012. He denied that the Tech. Planet had appointed him and thereafter deployed him with respondent company for doing miscellaneous job like filling, photocopying etc. He admitted that after his resignation on 30-4-2011, he had received the gratuity and also had withdrawn the EPF. He denied that his salary was being paid by Tech. Planet. He admitted that his attendance used to be marked in the attendance register of Tech. Planet. He denied that he remained under the supervision and control of Tech. Planet. He admitted that all the compliance of labour law was made by Tech. Planet. He denied that he was never transferred to Global Material Sourcing Department. He further denied that office order dated 1-5-2012 Ex. PW-1/B was never issued to him.

12. On the other hand, the respondent has examined one Shri Rinkesh Kumar, Supervisor Tech. Planet as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he stated that the petitioner had submitted his bio-data with M/s Tech. Planet and he was appointed on 1-5-2011 and the petitioner was deployed with respondent company. It has further been stated in the affidavit Ex. RW-1/A that the appointment of the petitioner was extended by M/s Tech. Planet *vide* letter dated 30-4-2012 from 1-5-2012 to 30-4-2013 and *vide* letter dated 30-4-2013 from

1-5-2013 to 30-4-2014 and the petitioner was appointed for a fixed period in terms of the provisions of section 2-oo (bb) of the Act and his appointment came to an end on the expiry of the period as mentioned in the appointment letter dated 30-4-2013. He also tendered in evidence authority dated 2-7-2017 Ex. RW-1/B, agreement between the management and contractor dated 1-5-2011 Ex. RW-1/C, letter regarding renewal of the agreement dated 28-4-2012 and 8-5-2013 Ex. RW-1/D and Ex. RW-1/E, particular submitted by the petitioner Ex. RW-1/F, appointment letter given to the petitioner Ex. RW-1/G, letters dated 1-5-2011, 30-4-2012 and 30-4-2013 Ex. RW-1/H, Ex. RW-1/J and Ex. RW-1/K, licence Ex. RW-1/L, PF slip Ex. RW-1/M, extract of payment register for the year, 2011 and 2013 Ex. RW-1/N and extract of attendance register for the year, 2011 and 2013 Ex. RW-1/O. In cross-examination, he denied that the Form Ex. RW-1/F was not filled in, in his presence. He denied that the salary to the petitioner *w.e.f.* May, 2011 till November, 2013 was paid by Ranbaxy. He denied that the documents tendered in evidence by him have been fabricated.

13. Shri Dhiraj Sharma, Manager HR of respondent company stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter Ex. RW-2/B, resignation letter Ex. RW-2/C, acceptance of resignation letter dated 30-4-2011 Ex. RW-2/D, experience certificate Ex. RW-2/E, receipts of online payment to the petitioner Ex. RW-2/F and Ex. RW-2/G, continuation letter Ex. RW-2/H, letters regarding renewal of contract Ex. RW-2/J and Ex. RW-2/K, letter regarding contract of staffing services Ex. RW-2/L and copy of certificate of registration Ex. RW-2/M. In cross-examination, he denied that M/s Tech Planet is their subsidiary. He admitted that Ex. PW-1/A has been issued by their company. He denied that Ex. PW-1/B was issued by their company. He admitted that Ex. PW-1/B came into notice of the company during conciliation proceedings. He further admitted that they had not lodged any FIR or complaint that Ex. PW-1/B is a forged document. He also admitted that his services of the petitioner were not terminated after issuance of letter Ex. PW-1/A. He denied that after the year, 2011, the respondent used to remit the salary of the petitioner in his bank account. He further denied that the services of the petitioner were terminated orally in the month of November, 2013. He also denied that some signatures of the petitioner were misused by the respondent. He denied that the respondent company has shown the contractor as the employer of the petitioner just to escape its liability.

14. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner was appointed as a trainee in the year, 2001 and confirmed in the year, 2002 by the respondent. It has also become clear that the petitioner has resigned from his job *vide* letter dated 29-3-2011 Ex. RW-2/C which was accepted on 30-4-2011 *vide* letter Ex. RW-2/D. Though, the case of the petitioner is that he was allured by the respondent to resign from job on the pretext that he would get another job on higher post, however, except for the bald statement of the petitioner, no other evidence has been led by him in this respect. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petitioner was allured by the respondent to resign from the job on 29-3-2011.

15. The further case of the petitioner is that after resigning from job the respondent company has issued him appointment letter Ex. PW-1/A *vide* which he was offered the job as consultant by the respondent company in Global Material Sourcing Department for the period of one year and his services were further extended *w.e.f.* May, 2012 to 1-5-2013 *vide* letter dated 1-5-2012 Ex. PW-1/B. However, the case of the respondent is that after the resignation, though, the petitioner was offered the job of a consultant at Global Material Sourcing Department for one year *vide* letter dated 30-4-2011 but he was never appointed with the respondent in terms of the aforesaid letter dated 30-4-2011. RW-2 deposed in his affidavit Ex. RW-2/A that after

resignation the petitioner applied for the job with M/s Tech. Planet (contractor) on a salary of Rs. 16,250/- per month who deputed the petitioner with the respondent and *w.e.f.* 1-5-2011, the petitioner was an employee of Tech. Planet (contractor). RW-1 Shri Rinkesh Kumar Supervisor of Tech. Planet deposed in his affidavit Ex. RW-1/A that the petitioner had submitted his particular/bio-data Ex. RC with M/s Tech. Planet and *vide* appointment letter Ex. RW-1/G he was appointed by M/s Tech. Planet on contractual basis and thereafter he was deputed by Tech Planet on 1-5-2011 for a period of one year on contract basis *w.e.f.* 1-5-2011 till 30-4-2012 *vide* letter Ex. RW-1/H and the said appointment of the petitioner was extended by Tech. Planet by another year *w.e.f.* 1-5-2012 to 30-4-2013 *vide* letter Ex. RW- 1/J and the appointment of the petitioner was further extended for another one year from 1-5-2013 to 30-4-2014 *vide* letter Ex. RW-1/K and thereafter his appointment was not extended and his appointment came to an end by efflux of time. The petitioner also admitted in cross-examination that he had filled up the bio-data form Ex. RC, the perusal of which shows that the petitioner had submitted his particular/bio-data with M/s Tech. Planet on 1-5-2011. He further admitted in cross-examination that Tech. Planet had given him appointment for a period of one year *w.e.f.* 1-5-2011 to 30-4-2012. The perusal of the appointment letter Ex. RW-1/G shows that the petitioner was appointed on contractual basis by M/s Tech. Planet and the petitioner had accepted the terms and conditions stipulated in the appointment letter by appending his signatures on the same. He also admitted that after six months from 1-5-2011 his salary was being paid by Tech. Planet and his attendance also used to be marked in the attendance register of Tech. Planet. He further admitted that all the compliances of Labour Laws were used to be made by the Tech. Planet. Moreover, he admitted in cross-examination that the demand notice Ex. RA was raised by him and its perusal shows that the same was addressed to respondent M/s Ranbaxy Ltd. wherein the petitioner himself had written as under:

“2. That I was transferred by your aforesaid company in Global Material Sourcing Department M/s Tech. Planet as a consultant on 30-4-2011, for a period of one year and I am serving in Global Material Sourcing Department in M/s Tech. Planet till today.

3. That now I want to join my job in M/s Ranbaxy Laboratories Ltd., Paonta Sahib as consultant.”

Therefore, in view of the aforesaid admission of the petitioner in the demand notice Ex. RA and also in view of his admission in cross-examination, it cannot be said that the petitioner was the employee of respondent company rather from the admission of the petitioner himself it has become clear that the petitioner was appointed by M/s Tech. Planet *vide* appointment letter Ex. RW-1/G on contractual basis and thereafter he was deputed by Tech Planet on 1-5-2011 for a period of one year *w.e.f.* 1-5-2011 till 30-4-2012 *vide* letter Ex. RW-1/H and the said appointment of the petitioner was extended by Tech. Planet by another year *w.e.f.* 1-5-2012 to 30-4-2013 *vide* letter Ex. RW-1/J and the appointment of the petitioner was further extended for another one year from 1-5-2013 to 30-4-2014 *vide* letter Ex. RW-1/K. In **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande & Ors, it has been held** that:—

“The appointment made on probation/adhoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

In 2006 (2) SCC 794 in case titled as *Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.* the Hon'ble Supreme Court has held as under:

"11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.

12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."

16. In the instant case, admittedly, the petitioner was engaged as consultant by M/s Tech. Planet on contract basis *vide* appointment letter Ex. RW-1/G and thereafter he was deputed by Tech Planet on 1-5-2011 for a period of one year *w.e.f.* 1-5-2011 till 30-4-2012 *vide* letter Ex. RW-1/H with the respondent and the said appointment of the petitioner was extended by Tech. Planet by another year *w.e.f.* 1-5-2012 to 30-4-2013 *vide* letter Ex. RW-1/J and the appointment of the petitioner was further extended for another one year from 1-5-2013 to 30-4-2014 *vide* letter Ex. RW-1/K and after that his contract was not renewed and his services came to an end with the efflux of time. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged as consultant by M/s Tech. Planet (contractor) on contract basis for a specific period, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947 and that his case falls within the exception as prescribed under section 2(oo) (bb) of the Act. Therefore, from the perusal of the entire evidence on record it has become clear that the petitioner was not the employee of respondent and he has failed to establish on record the employee and employer relationship between the petitioner and respondent.

17. Thus, in view of my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner during November, 2013 is not illegal and unjustified.

18. As observed earlier, since it has become clear that the petitioner was the employee of M/s Tech. Planet, therefore, it was incumbent upon the petitioner to have impleaded M/s Tech. Planet which was a necessary party, however, for the reasons best known to the petitioner he has failed to implead M/s Tech. Planet as party. Therefore, it can safely be held that the petition is bad for non-joinder of necessary party. Consequently, both these issues are decided in favour of the respondent and against the petitioner.

Issue No. 2 :

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

Issue No. 3 :

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

Relief:

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

Announced in the open Court today on this 15th Day of December, 2018.

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

04-12-2018

Present: None for the petitioner
 Shri Prateek Kumar Advocate *Vice Csl.* for respondent

It is 10.30 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner
 Shri Prateek Kumar Advocate *Vice Csl.* for respondent

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

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AFTER LUNCH

Present: None for the petitioner
 Shri Prateek Kumar Advocate *Vice Csl.* for respondent

It is 3.50 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court. For today the case has been listed for the evidence of the respondent but none appeared on behalf of the petitioner. The record reveals

that the issues in this case have been framed on 7-6-2018 and thereafter the case was being listed for the evidence of the petitioner and after having availed six opportunities, the petitioner appeared into the witness box as PW-1 in support of his claim and thereafter the case was listed for the evidence of the respondent for today but none appeared on behalf of the petitioner today which clearly shows that at present the petitioner is not interested to pursue his case. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether termination of the services of Shri Dila Ram s/o Shri Nain Singh, r/o Village Dhaker, P.O. Baur, Tehsil Chopal, District Shimla, H.P. by the management of M/s Sun Pharmaceuticals Industries Village Bata Mandi, Paonta Sahib, District Sirmaur, H.P. w.e.f. 13-10-2015 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

In support of his case, the petitioner has filed the claim petition averring therein that he was illegally terminated from service and prayed that the directions be issued to the respondents to re-instate him in service alongwith all consequential benefits including back-wages.

By filing detailed reply, the respondent denied the averments made in the claim petition and prayed for the dismissal of the claim petition.

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

Thereafter, on the pleadings of the parties, the following issues were framed by this Court on 7-6-2018 :—

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 13-10-2015 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the claim is neither competent nor maintainable as alleged? . . .*OPR.*
- (4) Whether the petitioner was not a workman as alleged? . . .*OPR.*

Relief:

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

<i>Issue No. 3 :</i>	No
<i>Issue No. 4 :</i>	Yes
<i>Relief :</i>	Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 4 :

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

To prove these issues, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he submitted his bio-data Ex. R-1 to the respondent and thereafter he was appointed as manufacturing trainee *vide* Ex. R-2. He further admitted that *vide* letter Ex. R-3, he was informed that Ranbaxy has merged into Sun Pharma and the terms and conditions mentioned in Ex. R-2 shall remain the same. He also admitted that he used to get ₹ 5100/- as stipend and ₹ 500/- as house rent subsidy. He admitted that his traineeship period was terminated *vide* Ex. R-4. He further admitted that he raised the demand notice Ex. R-5 to which the respondent had filed the reply Ex. R-6. He denied that his services were legally terminated as per the terms and conditions of Ex. R-2. After examining PW-1, *vide* separate statement, the petitioner has closed his evidence and thereafter the case was listed for the evidence of the respondent but neither the petitioner nor his counsel has appeared before this Court today. From the admission made by the petitioner in cross-examination, it is abundantly clear that the petitioner was engaged as a trainee and not as daily wage and he used to get stipend and his traineeship period was terminated *vide* letter Ex. R-4. In cross-examination, the petitioner admitted that *vide* letter Ex. R-2, he was appointed as trainee. As per clause 14 of the terms and conditions of letter Ex. R-2, training shall stand completed after expiry of one year without any automatic absorption in company's rolls. The services of the petitioner were terminated *vide* letter Ex. R-4 in terms of clause 6 of agreement of Manufacturing Traineeship date 23-12-2014 Ex. R-2 which has duly been signed by the petitioner. The case of the respondent is that the petitioner was only a trainee, hence, he does not fall under the definition of workman as defined in section 2 (s) of the I.D Act. Now, the question which arises for consideration before this Court is as to whether the petitioner falls under the definition of a workman or not. This question has been considered in detail by the **Hon'ble High Court of Andhra Pradesh in its judgment 2004 LLR 387, Vijayalakshmi Insecticides and Pesticides Ltd., Hyderabad Vs. Chairman, Industrial Tribunal-cum-Labour Court, Visakhapatnam and Ors.** wherein it has been held that:

"In Ahmedabad Mfg. & Calico Ptg., Co. Ltd Vs. Ramtahei, AIR 1972 SC 1598, it was held that the workers in order to come within the definition of 'employee' need not necessarily be directly connected with the main industry. In K. Dasarath Vs. Labour Court-1, Andhra Pradesh, Hyderabad (W.P. No: 14787/1996 decided on 27-3-2002) 2002 (4) ALT 194. 2002 LLR 945, one of us (P.S Narayana. J) while dealing with the aspect of probationer and termination of services and validity thereof, had arrived at the conclusion that though the probation of the petitioner/workman was extended twice, the same cannot be taken as deemed confirmation and hence the order of termination cannot be interfered with. In M/s Kalyani Sharp India Ltd. V. Labour Court No. 1 Gwalior, AIR 2002, SC 300, the Apex Court while dealing with the termination of service without notice of a trainee technician had arrived at the conclusion that such termination before the expiry of probationary any period without issuance of any prior notice while not

amount to retrenchment and hence the same is not legal in the said discussion, the Apex Court had referred to an followed the discussion in *Escorts Ltd. Vs. Presiding Officer*, (1997) 11 SCC 521 and *M. Venugopal Vs. Divisional Manager LIC of India* 1994 -1 CLR 544 SC (1994) -2 SCC 323 in *Kamal Kumar Vs. J.P S Malik, Presiding Officer Labour Court*, 1998 (79) FLR 965 (Del), the Delhi High Court held:

"It is no doubt true that section 2 (s) of the Act also uses the expression 'apprentice', but merely using the work 'apprentice' within the definition of 'workman'. In my considered opinion, cannot confer right on a trainee to be called a workman within the meaning of section 2(s) of the Act. When the said definition is linked into closely. It is apparent that an apprentice could be a workman under section 2(s) of the Industrial Disputes Act if he is employed to do any manual, clerical, supervisory or technical work." In management of *M/s Otis Elevator company Ltd Vs. Presiding Officer, Industrial Tribunal-III* 2003 (96) FLR 53, it was held that a trainee engaged by the petitioner-company does not fall within the definition of workman."

In 2001, LLR 812, Kalayani Sharp India Ltd. Vs. Labour Court No. 1, Gawalior and another, the Hon'ble Supreme Court has held that:

"The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularized only on satisfactory completion of his training. If these clauses are read together, it is clear that he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a trainee service technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period, the facility could be withdrawn at any time and he would be regularized only on completion of his training. Thus, the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the services as claimed by the respondent does not arise. *Escort case (ide supra)*, is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the Labour Court is set aside and the claim made by the respondent is dismissed."

Further, **in 1997 LLR 699 SC, Escorts Ltd. Vs. Presiding Officer and anr.**, it has been held by the Hon'ble Supreme Court that:

"3. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Labour Court, because in our opinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) excludes from the ambit of the expression 'retrenchment' as defined in the main part of section 2(o) "termination" of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. "The said provisions has been considered by Court in *M. Venugopal Vs. Divisional Manager, LIC and anr.* 1994 (2) SCC 323. The appellant in that case had been appointed on probation for a period of one year from May, 23, 1984 to May 22, 1985 and the said period of probation was extended for further period of one year from May 23, 1985 to May 22, 1986. Before the expiry of said period of probation, his services were terminated on May 9, 1986. It was held that since the termination was in accordance

with the terms of the contract though before the expiry of the period of probation it fell within the ambit of section 2(oo)(bb) of the Act and did not constitute retrenchment. Here, also the services of the workman were terminated on February 13, 1987, as per the terms of the contract of employment contained in the appointment letter dated Jan., 9 1987 which enable the appellant to terminate the services of the workman at any stage without assigning any reason. Since, the services of the workman were terminated as per the terms of the contract of employment, it does not amount retrenchment under section 2(oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by section 25-F and 25-G of the Act.”

Therefore, the perusal of the aforesaid judgments makes it clear that a trainee will not be a “workman” as defined under section 2(s) of the Act. In the present case also as per the letter regarding offer of traineeship Ex. R-2, the petitioner was engaged as trainee for a period of one year from the date of his joining on the basis of monthly stipend. Therefore, in the light of the aforesaid facts it can safely be held that the petitioner was not a “workman” as the purpose of the engagement of the petitioner was only to offer him training under the terms and conditions stipulated in the letter Ex. R-2. The petitioner was being paid only a stipend which cannot be termed as wages. In that view of matter, the petitioner will not come within the definition of “workman” as defined under section 2(s) of the Act. Therefore, in such a case, the question of issuance of notice under section 25-F of the Act does not arise at all. Similarly, it cannot be said that there is any violation of provisions of section 25-G and 25-H of the Act. Therefore, in view of my above discussion and law laid down (*supra*), I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 13-10-2015 is not illegal and unjustified as he was only imparted training by the respondent during his training period. Accordingly, both these issues decided in favour of the respondent and against the petitioner.

Issue No. 2 :

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

Issue No. 3.

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

Relief :

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

Announced:
4-12-2018.

Sd/-
(SUSHIL KUKREJA),

*Presiding Judge,
Labour Court, Shimla.*

04-12-2018

Present: None for the petitioner
Shri Prateek Kumar Advocate Vice Csl. for respondent

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

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AGAIN

Present: None for the petitioner.
Shri Prateek Kumar Advocate Vice Csl. for respondent.

It is 12.50 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AFTER LUNCH

Present: None for the petitioner
Shri Prateek Kumar Advocate Vice Csl. for respondent

It is 4.00 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court. For today the case has been listed for the evidence of the respondent but none appeared on behalf of the petitioner. The record reveals that the issues in this case have been framed on 7-6-2018 and thereafter the case was being listed for the evidence of the petitioner and after having availed six opportunities, the petitioner appeared into the witness box as PW-1 in support of his claim and thereafter the case was listed for the evidence of the respondent for today but none appeared on behalf of the petitioner today which clearly shows that at present the petitioner is not interested to pursue his case. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether termination of the services of Shri Vikram Singh s/o Shri Dalip Singh, r/o House No. 128, Ward No. 3, VPO Kanti Mashwa, Tehsil Paonta Sahib, District Sirmaur, H.P. by the management of M/s Sun Pharmaceuticals Industries, Village Bata Mandi, Paonta Sahib, District Sirmaur, H.P. w.e.f. 28-9-2015 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

In support of his case, the petitioner has filed the claim petition averring therein that he was illegally terminated from service and prayed that the directions be issued to the respondents to re-instate him in service along-with all consequential benefits including back-wages.

By filing detailed reply, the respondent denied the averments made in the claim petition and prayed for the dismissal of the claim petition.

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

Thereafter, on the pleadings of the parties, the following issues were framed by this Court on 7-6-2018.

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 28-9-2015 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the claim is neither competent nor maintainable as alleged? . . .*OPR.*
- (4) Whether the petitioner was not a workman as alleged? . . .*OPR.*

Relief :

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : No

Issue No. 4 : Yes

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

REASONS FOR FINDINGS

Issues No. 1 & 4 :

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

To prove these issues, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he submitted his bio-data Ex. R-1 to the

respondent and thereafter he was appointed as manufacturing trainee *vide* Ex. R-2. He further admitted that *vide* letter Ex. R-3, he was informed that Ranbaxy has merged into Sun Pharma and the terms and conditions mentioned in Ex. R-2 shall remain the same. He also admitted that he used to get ₹ 5100/- as stipend and ₹ 500/- as house rent subsidy. He admitted that his traineeship period was terminated *vide* Ex. R-4. He further admitted that he raised the demand notice Ex. R-5 to which the respondent had filed the reply Ex. R-6. He denied that his services were legally terminated as per the terms and conditions of Ex. R-2. After examining PW-1, *vide* separate statement, the petitioner has closed his evidence and thereafter the case was listed for the evidence of the respondent but neither the petitioner nor his counsel has appeared before this Court today. From the admission made by the petitioner in cross-examination, it is abundantly clear that the petitioner was engaged as a trainee and not as daily wager and he used to get stipend and his traineeship period was terminated *vide* letter Ex. R-4. In cross-examination, the petitioner admitted that *vide* letter Ex. R-2, he was appointed as trainee. As per clause 14 of the terms and conditions of letter Ex. R-2, training shall stand completed after expiry of one year without any automatic absorption in company's rolls. The services of the petitioner were terminated *vide* letter Ex. R-4 in terms of clause 6 of agreement of Manufacturing Traineeship dated 23-12-2014 Ex. R-2 which has duly been signed by the petitioner. The case of the respondent is that the petitioner was only a trainee, hence, he does not fall under the definition of workman as defined in section 2 (s) of the I.D Act. Now, the question which arises for consideration before this Court is as to whether the petitioner falls under the definition of a workman or not. This question has been considered in detail by the **Hon'ble High Court of Andhra Pradesh in its judgment 2004 LLR 387, Vijayalakshmi Insecticides and Pesticides Ltd., Hyderabad Vs. Chairman, Industrial Tribunal-cum-Labour Court, Visakhapatnam and Ors.** wherein it has been held that:

“In Ahmedabad Mfg. & Calico Ptg., Co. Ltd *Vs.* Ramtahei, AIR 1972 SC 1598, it was held that the workers in order to come within the definition of "Employee" need not necessarily be directly connected with the main industry. In K. Dasarath *Vs.* Labour Court-1, Andhra Pradesh, Hyderabad (W.P. No.: 14787/1996 decided on 27-3-2002) 2002 (4) ALT 194. 2002 LLR 945, one of us (P.S Narayana. J) while dealing with the aspect of probationer and termination of services and validity thereof, had arrived at the conclusion that though the probation of the petitioner/workman was extended twice, the same cannot be taken as deemed confirmation and hence the order of termination cannot be interfered with. In M/s Kalyani Sharp India Ltd. *Vs.* Labour Court No. 1 Gwalior, AIR 2002, SC 300, the Apex Court while dealing with the termination of service without notice of a trainee technician had arrived at the conclusion that such termination before the expiry of probationary any period without issuance of any prior notice while not amount to retrenchment and hence the same is not legal in the said discussion, the Apex Court had referred to and followed the discussion in Escorts Ltd. *Vs.* Presiding Officer, (1997) 11 SCC 521 and M. Venugopal *Vs.* Divisional Manager LIC of India 1994-1 CLR 544 SC (1994) -2 SCC 323 in Kamal Kumar *Vs.* J.P.S. Malik, Presiding Officer, Labour Court, 1998 (79) FLR 965 (Del), the Delhi High Court held:

"It is no doubt true that section 2 (s) of the Act also uses the expression 'apprentice', but merely using the work 'apprentice' within the definition of 'workman'. In my considered opinion, cannot confer right on a trainee to be called a workman within the meaning of section 2(s) of the Act. When the said definition is looked into closely. It is apparent that an apprentice could be a workman under section 2(s) of the Industrial Disputes Act if he is employed to do any manual, clerical, supervisory or technical work. In management of M/s Otis Elevator Company Ltd. *Vs.* Presiding Officer, Industrial Tribunal-III 2003 (96) FLR 53, it was held that a trainee engaged by the petitioner-company does not fall within the definition of workman."

In 2001, LLR 812, Kalayani Sharp India Ltd. Vs. Labour Court No. 1, Gawalior and another, the Hon'ble Supreme Court has held that:

“The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularized only on satisfactory completion of his training. If these clauses are read together, it is clear that he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a trainee service technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period, the facility could be withdrawn at any time and he would be regularized only on completion of his training. Thus, the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the services as claimed by the respondent does not arise. Escort case (*ide supra*), is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the Labour Court is set aside and the claim made by the respondent is dismissed.”

Further, **in 1997 LLR 699 SC, Escorts Ltd., Vs. Presiding Officer and anr.**, it has been held by the Hon'ble Supreme Court that:

“3. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Labour Court, because in our opinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) excludes from the ambit of the expression 'retrenchment' as defined in the main part of section 2(oo) "termination" of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. “The said provisions has been considered by Court in *M. Venugopal Vs. Divisional Manager, LIC and anr.* 1994 (2) SCC 323. The appellant in that case had been appointed on probation for a period of one year from May, 23, 1984 to May 22, 1985 and the said period of probation was extended for further period of one year from May 23, 1985 to May 22, 1986. Before the expiry of said period of probation, his services were terminated on May 9, 1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of section 2(oo) (bb) of the Act and did not constitute retrenchment. Here, also the services of the workman were terminated on February 13, 1987, as per the terms of the contract of employment contained in the appointment letter dated Jan., 9, 1987 which enable the appellant to terminate the services of the workman at any stage without assigning any reason. Since, the services of the workman were terminated as per the terms of the contract of employment, it does not amount retrenchment under section 2(oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by section 25-F and 25-G of the Act.”

Therefore, the perusal of the aforesaid judgments makes it clear that a trainee will not be a "workman" as defined under section 2(s) of the Act. In the present case also as per the letter regarding offer of traineeship Ex. R-2, the petitioner was engaged as trainee for a period of one year from the date of his joining on the basis of monthly stipend. Therefore, in the light of the aforesaid facts it can safely be held that the petitioner was not a "workman" as the purpose of the engagement of

the petitioner was only to offer him training under the terms and conditions stipulated in the letter Ex. R-2. The petitioner was being paid only a stipend which cannot be termed as wages. In that view of matter, the petitioner will not come within the definition of "workman" as defined under section 2(s) of the Act. Therefore, in such a case, the question of issuance of notice under section 25-F of the Act does not arise at all. Similarly, it cannot be said that there is any violation of provisions of section 25-G and 25-H of the Act.

Therefore, in view of my above discussion and law laid down (*supra*), I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 28-9-2015 is not illegal and unjustified as he was only imparted training by the respondent during his training period. Accordingly, both these issues decided in favour of the respondent and against the petitioner.

Issue No. 2 :

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

Issue No. 3 :

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

Relief :

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

Announced:
4-12-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

17-12-2018

Present: Shri Gaurav Kumar, President of the workers union with Shri Hoshiyar Kaushal, Advocate for petitioner.
Shri Rahul Mahajan, Advocate for respondents No. 1 & 2
None for respondent No. 3

At this stage, it has been stated by Shri Gaurav Kumar, President of the workers union that he has been authorized by the Sub Pharma Karamchari Sangh to make a statement before this Court. He further stated that the workers union has settled all the issues raised *vide* demand notice dated 26-9-2016 with respect to which the present reference No. 10/2018 has

been sent by the appropriate government and now the workers union does not want to proceed further with the present reference and the same be disposed of as settled. To this effect his statement recorded separately.

Therefore, in view of the aforesaid statement of Shri Gaurav Kumar, President of the petitioner union, I am satisfied that the workers union had settled all the issues raised in demand notice dated 26-9-2016 with respect to the present reference No.10/2018, hence, the reference sent by the appropriate government for adjudication to this Court stands answered as settled. The statement of Shri Gaurav Kumar President of the petitioner union shall form a part of this order/award. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

17-12-2018

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

04-12-2018

Present: None for the petitioner
 Shri Prateek Kumar Advocate Vice Csl. for respondent

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

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner
 Shri Prateek Kumar Advocate Vice Csl. for respondent

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

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AFTER LUNCH

Present: None for the petitioner
 Shri Prateek Kumar Advocate Vice Csl. for respondent

It is 3.55 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court. For today the case has been listed for the evidence of the respondent but none appeared on behalf of the petitioner. The record reveals that the issues in this case have been framed on 7-6-2018 and thereafter the case was being listed for the evidence of the petitioner and after having availed six opportunities, the petitioner appeared into the witness box as PW-1 in support of his claim and thereafter the case was listed for the evidence of the respondent for today but none appeared on behalf of the petitioner today which clearly shows that at present the petitioner is not interested to pursue his case. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether termination of the services of Shri Pradeep Sahrma s/o Shri Ram lal, r/o Village Shamah, P.O Shawaga, Tehsil Paonta Sahib, District Sirmaur, H.P. by the management of M/s Sun Pharmaceuticals Industries, Village Bata Mandi, Paonta Sahib, District Sirmour, HP w.e.f. 28-9-2015 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

In support of his case, the petitioner has filed the claim petition averring therein that he was illegally terminated from service and prayed that the directions be issued to the respondents to re-instate him in service alongwith all consequential benefits including backwages.

By filing detailed reply, the respondent denied the averments made in the claim petition and prayed for the dismissal of the claim petition.

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

Thereafter, on the pleadings of the parties, the following issues were framed by this Court on 7-6-2018.

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 28-9-2015 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the claim is neither competent nor maintainable as alleged? . . .*OPR.*
- (4) Whether the petitioner was not a workman as alleged? . . .*OPR.*

Relief.

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

<i>Issue No. 3 :</i>	No
<i>Issue No. 4</i>	Yes
<i>Relief :</i>	Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 4 :

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

To prove these issues, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he admitted that he submitted his bio-data Ex. R-1 to the respondent and thereafter he was appointed as manufacturing trainee *vide* Ex. R-2. He further admitted that *vide* letter Ex. R-3, he was informed that Ranbaxy has merged into Sun Pharma and the terms and conditions mentioned in Ex. R-2 shall remain the same. He also admitted that he used to get ₹ 5100/- as stipend and ₹ 500/- as house rent subsidy. He admitted that his traineeship period was terminated *vide* Ex. R-4. He further admitted that he raised the demand notice Ex. R-5 to which the respondent had filed the reply Ex. R-6. He denied that his services were legally terminated as per the terms and conditions of Ex. R-2. After examining PW-1, *vide* separate statement, the petitioner has closed his evidence and thereafter the case was listed for the evidence of the respondent but neither the petitioner nor his counsel has appeared before this Court today. From the admission made by the petitioner in cross-examination, it is abundantly clear that the petitioner was engaged as a trainee and not as daily wager and he used to get stipend and his traineeship period was terminated *vide* letter Ex. R-4. In cross-examination, the petitioner admitted that *vide* letter Ex. R-2, he was appointed as trainee. As per clause 14 of the terms and conditions of letter Ex. R-2, training shall stand completed after expiry of one year without any automatic absorption in company's rolls. The services of the petitioner were terminated *vide* letter Ex. R-4 in terms of clause 3 of agreement of Manufacturing Traineeship dated 23-12-2014 Ex. R-2 which has duly been signed by the petitioner. The case of the respondent is that the petitioner was only a trainee, hence, he does not fall under the definition of workman as defined in section 2 (s) of the I.D Act. Now, the question which arises for consideration before this Court is as to whether the petitioner falls under the definition of a workman or not. This question has been considered in detail by the **Hon'ble High Court of Andhra Pradesh in its judgment 2004 LLR 387, Vijayalakshmi Insecticides and Pesticides Ltd., Hyderabad Vs. Chairman, Industrial Tribunal-cum-Labour Court, Visakhapatnam and Ors.** wherein it has been held that:

“In Ahmedabad Mfg. & Calico Ptg., Co. Ltd *Vs.* Ramtahei, AIR 1972 SC 1598, it was held that the workers in order to come within the definition of "employee" need not necessarily be directly connected with the main industry. In K. Dasarath *Vs.* Labour Court-1, Andhra Pradesh, Hyderabad (W.P. No: 14787/1996 decided on 27-3-2002) 2002 (4) ALT 194. 2002 LLR 945, one of us (P.S Narayana. J) while dealing with the aspect of probationer and termination of services and validity thereof, had arrived at the conclusion that though the probation of the petitioner/workman was extended twice, the same cannot be taken as deemed confirmation and hence the order of termination cannot be interfered with. In M/s Kalyani Sharp India Ltd. *Vs.* Labour Court No. 1 Gwalior, AIR 2002, SC 300, the Apex Court while dealing with the termination of service without notice of a trainee technician had arrived at the conclusion that such termination before the expiry of probationary any period without issuance of any prior notice while not amount to retrenchment and hence the same is not legal in the said discussion, the Apex

Court had referred to an followed the discussion in *Escorts Ltd. Vs. Presiding Officer*, (1997) 11 SCC 521 and *M. Venugopal Vs. Divisional Manager LIC of India* 1994-1 CLR 544 SC (1994)-2 SCC 323 in *Kamal Kumar Vs. J.P. S. Malik*, Presiding Officer, Labour Court, 1998 (79) FLR 965 (Del), the Delhi High Court held:

"It is no doubt true that section 2 (s) of the Act also uses the expression "apprentice", but merely using the work "apprentice" within the definition of "workman". In my considered opinion, cannot confer right on a trainee to be called a workman within the meaning of section 2(s) of the Act. When the said definition is linked into closely. It is apparent that an apprentice could be a workman under section 2(s) of the Industrial Disputes Act if he is employed to do any manual, clerical, supervisory or technical work." In management of *M/s Otis Elevator Company Ltd Vs. Presiding Officer, Industrial Tribunal-III* 2003 (96) FLR 53, it was held that a trainee engaged by the petitioner-company does not fall within the definition of workman."

In 2001, LLR 812, Kalayani Sharp India Ltd. Vs. Labour Court No. 1, Gawalior and another, the Hon'ble Supreme Court has held that:

"The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularized only on satisfactory completion of his training. If these clauses are read together, it is clear that he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a trainee service technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period, the facility could be withdrawn at any time and he would be regularized only on completion of his training. Thus, the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the services as claimed by the respondent does not arise. Escort case (*ide supra*), is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the Labour Court is set aside and the claim made by the respondent is dismissed."

Further, **in 1997 LLR 699 SC, Escorts Ltd. Vs. Presiding Officer and anr.**, it has been held by the Hon'ble Supreme Court that:

"3. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Labour Court, because in our opinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) excludes from the ambit of the expression 'retrenchment' as defined in the main part of section 2(oo) "termination" of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. "The said provisions has been considered by Court in *M. Venugopal Vs. Divisional Manager, LIC and anr.* 1994 (2) SCC 323. The appellant in that case had been appointed on probation for a period of one year from May, 23, 1984 to May 22, 1985 and the said period of probation was extended for further period of one year from May 23, 1985 to May 22, 1986. Before the expiry of said period of probation, his services were terminated on May 9, 1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of

section 2(o) (b) of the Act and did not constitute retrenchment. Here, also the services of the workman were terminated on February 13, 1987, as per the terms of the contract of employment contained in the appointment letter dated Jan., 9 1987 which enable the appellant to terminate the services of the workman at any stage without assigning any reason. Since, the services of the workman were terminated as per the terms of the contract of employment, it does not amount retrenchment under section 2(o) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by section 25-F and 25-G of the Act."

Therefore, the perusal of the aforesaid judgments makes it clear that a trainee will not be a "workman" as defined under section 2 (s) of the Act. In the present case also as per the letter regarding offer of traineeship Ex. R-2, the petitioner was engaged as trainee for a period of one year from the date of his joining on the basis of monthly stipend. Therefore, in the light of the aforesaid facts it can safely be held that the petitioner was not a "workman" as the purpose of the engagement of the petitioner was only to offer him training under the terms and conditions stipulated in the letter Ex. R-2. The petitioner was being paid only a stipend which cannot be termed as wages. In that view of matter, the petitioner will not come within the definition of "workman" as defined under section 2(s) of the Act. Therefore, in such a case, the question of issuance of notice under section 25-F of the Act does not arise at all. Similarly, it cannot be said that there is any violation of provisions of section 25-G and 25-H of the Act.

Therefore, in view of my above discussion and law laid down (*supra*), I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 28-9-2015 is not illegal and unjustified as he was only imparted training by the respondent during his training period. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

Issue No.2

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

Issue No. 3 :

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

Relief:

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

Announced:

4-12-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

17-12-2018

Present: Sh. Gaurav Kumar, President of the workers union with Sh. Hoshiyar Kaushal, Advocate for petitioner.
Sh. Rahul Mahajan, Advocate for respondents No. 1 & 2.

None for respondent No-3

At this stage, it has been stated by Shri Gaurav Kumar, President of the works union that he has been authorized by the Sub Pharma Karamchari Sangh to make a statement before this Court. He further stated that the workers union has settled all the issues raised *vide* demand notice dated 26-09-2016 with respect to which the present reference No. 10/2018 has been sent by the appropriate government and now the workers union does not want to proceed further with the present reference and the same be disposed of as settled. To this effect his statement recorded separately.

Therefore, in view of the aforesaid statement of Sh. Gaurav Kumar, President of the petitioner union, I am satisfied that the workers union had settled all the issues raised in demand notice dated 26-09-2016 with respect to the present reference No.10/2018, hence, the reference sent by the appropriate government for adjudication to this Court stands answered as settled. The statement of Sh. Gaurav Kumar President of the petitioner union shall form a part of this order/award. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
17-12-2018

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

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

Ref. No. 7 of 2017

Instituted on 5-1-2017

Decided on 11-12-2018

Udai Ram s/o Shri Gokal Chand, r/o Village Ramadhaun, P.O Rama, Tehsil Nahan,
District SirmAur, H.P. *.Petitioner.*

Himachal Pradesh Financial Corporation, New Himrus Building, Circular Road
Shimla-171001 through its General Manager. *.Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Bal Ram Sharma, Advocate
For respondent : Shri H.R Jhingta, Advocate

AWARD

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

"Whether termination of services of Shri Udai Ram s/o Shri Gokal Chand, r/o Village Ramadhaun, P.O Rama Tehsil Nahan, District Sirmaur, H.P. by the General Manager, Himachal Pradesh Financial Corporation, New Himrus Building Circular Road Shimla-1 w.e.f. 20-12-2003 who was employed to perform the duties of watch and ward of the taken over assets of M/s Shreene Electrical Pvt. Ltd., Kala Amb, District Sirmaur consequent upon the sale/restoration of the assets, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 12 years in raising the dispute, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of petitioner is that in the month of Jan., 1990 he was appointed as Chowkidar by the respondent at Nahan on daily wages basis and he remained as such for more than one year till 19-12-2003 and thereafter he was illegally terminated by the respondent. As per the agreement, the petitioner was appointed by the respondent as chowkidar and his services were to be continued and there was no specific conditions in the appointment of the petitioner to achieve a particular target and no specification of term was prescribed for his appointment. It is further averred that as per the agreement the petitioner was regularly attending his job and was doing the work honestly and diligently and on 19-12-2003, the services of the petitioner were terminated by the respondent in sheer violation of mandatory section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) with the assurance that his services would be re-engaged but of no avail. Against this back-drop it has been prayed that the respondent be directed to reinstate the petitioner with backwages and continuity of service. It is further prayed that the respondent be burdened with heavy costs and award compensation of ₹ 25,0000/- to the petitioner for mental agony, physical harassment and financial hardship.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petitioner was engaged as daily waged chowkidar on contract basis for specific purpose and period to watch and ward of assets of industrial units taken over by the respondent under section 29 of the SFCs Act, 1951 and the engagement of the petitioner was co-terminus with the sale of the industrial unit, that the respondent corporation does not have any regular vacancy of chowkidar engaged or to be engaged in taken over units and no rules and regulations have been framed to engage them as the duties which are assigned to the chowkidar appointed in taken over units are of casual nature on daily wages and since the petitioner was engaged on contract basis for specific purpose, therefore, the completion of 240 days of continuous service in a calendar year by the petitioner cannot entitle him for regularization or re-engagement in service, that the petitioner cannot be said to be or deemed to be an employee of the industrial concern as he was engaged only for watch and ward purpose in taken over units, that the respondent was not the employer of the petitioner as it has not paid any salary to him and the wages paid to the petitioner was debited to the loan account of the concerned industrial unit and estoppel. On merits, the averments made in the preliminary objections have been reiterated. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed by this Court on 22-5-2018.

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 20-12-2003 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . . *OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . . *OPP.*
- (3) Relief :

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

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

Issue No. 1 : No

Issue No. 2 : Becomes redundant

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

REASONS FOR FINDINGS

Issue No. 1 :

7. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and his services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act.

8. On the other hand, the learned counsel for respondent contended that the services of the petitioner were engaged as daily waged chowkidar on contract basis for specific purpose and period to watch and ward of the assets of industrial units taken over by the respondent and his engagement was co-terminus with the sale of the industrial unit. He further contended that the claim of the petitioner is stale as the petitioner has raised the present dispute after a period of 12 years.

9. To prove his case, the petitioner appeared into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he stated that for the first time he was engaged as chowkidar at Chauhan Chemical in the year, 1990. He denied that Chauhan Chemical used to pay him the wages. He admitted that Chauhan Chemical was closed at that time and his services were terminated after one year. He further admitted that thereafter he was engaged in the year, 1992 at Hakyu Paper Mills at Majra and then he was engaged at Sri Ram Paper Mills at Bata Mandi, Paonta Sahib in the year, 1991-92. He also admitted that he had filed CWP before the Hon'ble High Court, which was disposed of *vide* order Mark RX-1 dated 5-8-1996. He denied that his services were engaged for a specific period as chowkidar in the factories, which were taken over by the corporation till the factories were sold by the corporation. He further denied that his services were never engaged against any post by the corporation. He admitted that he raised the demand notice after a period of 12 years.

10. On the other hand, the respondent has examined one Shri B. L. Bhardwaj, Law Officer as RW-1 who deposed that the petitioner was initially engaged as chowkidar on 7-9-1994 as watch and ward staff to look-after taken over unit Ohri Lime and Chemical Industry

at Paonta Sahib, District Sirmaur, HP and his services were discontinued *w.e.f.* 18-4-1995 when the taken over unit was auctioned and thereafter against his removal he had filed CWP No. 2229 of 1995 before the Hon'ble High Court which was disposed of *vide* order dated 5-8-1996 Ex. RW-1/A. He further deposed that then the petitioner had filed a representation dated 28-10-1996 to engage him and he was further engaged on 4-11-1996 to look-after the taken over assets of another unit *vide* agreement dated 5-11-1996 mark RX and thereafter his services were again discontinued on 19-12-2003 *vide* letter Mark RX-1 when the unit was auctioned. He also deposed that they used to pay wages to the petitioner by crediting the amount in the loan account of taken over units and he was not engaged against any vacancy/post and there is no post available with corporation and no fresh re-cruitments are being made. He deposed that they have written a letter dated 20-8-2016 Ex. RW-1/B to offer the petitioner to work as watch and ward the assets of M/s Anurag Pharmaceuticals, Nalagarh but he had not turned up and the petitioner had never approached the corporation after the year, 2003. In cross-examination, he denied that the petitioner was engaged in Jan., 1990. He further denied that the petitioner had worked continuously with HPFC from Jan., 1990 to 19-12-2003. He admitted that no notice under section 25-F of ID Act was issued to the petitioner and stated that as the same was not required. He denied that letter Ex. RW-1/B was never sent to the petitioner.

11. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked as chowkidar for a specific purpose and period to watch and ward the assets of industrial units taken over by the respondent co-terminus with the sale of the units. The case of the petitioner is that he was engaged as daily waged chowkidar by the respondent but to this effect no evidence has been led by the petitioner which could go to show that he had worked as daily wager with the respondent corporation. There is no evidence on record led by the petitioner to prove that he had completed 240 days in any calendar year. Even, the petitioner has admitted in his cross-examination that for the first time in the year, 1990, he had worked at Chauhan Chemicals and thereafter he was engaged in the year, 1992 at Hakyu Paper Mills at Majra and after that he was engaged at Sri Ram paper Mills at Bata Mandi, Paonta Sahib. Hence, from the perusal of the record, it stands duly proved that the services of the petitioner had been engaged as chowkidar on contract basis for specific period and specific purpose under different units of industrial establishments which were taken over by the respondent corporation. In **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. Vs. Y.D Deshpande & Ors**, it has been held that:—

“The appointment made on probation/adhoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

It was also held in (2006) 6 SCC 221, case titled as Reserve Bank of India Vs. Gopinath Sharma & Anr. that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

In **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board Vs. Subhash Chand & Anr.** the Hon'ble Supreme Court has held as under:

“11. The question as to whether Chapter V-A of the Act will apply or not would be dependant on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service

in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.

12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."

12. In the instant case, admittedly, the petitioner was engaged as chowkidar to watch and ward the assets of industrial units which were taken over by the respondent corporation co-terminus with the sale of the taken over units. The services of the petitioner were discontinued *w.e.f.* 19-12-2003 *vide* letter Mark RX-1 wherein it has been clearly mentioned that since the respondent corporation has sold the plot/building of Shereen Electricals, Kala Amb, hence, his services as chowkidar is discontinued *w.e.f.* 19-12-2003. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged as chowkidar for a specific period and specific purpose by the respondent to watch and ward the taken over assets, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947 and that his case falls within the exception as prescribed under section 2(oo)(bb) of the Act. Consequently, this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2 :

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

Relief :

As a sequel to my above discussion and findings on issues No. 1 & 2, the claim of the petitioner fails and is hereby dismissed. The reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 11th Day of December, 2018.

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

15-12-2018

Present: None for the petitioner
Shri H. N. Kashyap, ADA for respondents

It is 10.30 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner
Shri H. N. Kashyap, ADA for respondents

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

Sd/-
Presiding Judge,
Labour Court, Shimla

CASE CALLED AFTER LUNCH

Present: None for the petitioner
Shri H. N. Kashyap, ADA for respondents

It is 3.50 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court which clearly shows that at present the petitioner is not interested to pursue his case arising out of reference. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether the demand raised regarding the regularization of the services of Shri Geeta Ram Sharma s/o Shri Daulat Ram, r/o Village Chalawag, P.O Theog, District Shimla, H.P. by the President/General Secretary, All India Trade Union Congress, H.P. (Reg. No. 1825/1920) c/o Shri Geeta Ram Sharma s/o Shri Daulat Ram, r/o Village Chalawag, P.O. Theog, District Shimla, H.P. vide demand notice dated 25-6-2017 (copy enclosed) before (i) The Chief Conservator of Forests, Forest Department Talland, Shimla-2, (ii) The Divisional Forest Officer, Forest Division Theog, District Shimla, H.P. is proper and justified? If yes, what relief the aggrieved workman is entitled to from the above employer?"

In support of his case, the petitioner has filed the claim petition praying therein that the respondents be directed to regularize the services of the petitioner after the completion of five years of service with all consequential benefits including arrears of pay, continuity in service and seniority.

From the aforesaid reference sent by the appropriate government, it is clear that the petitioner has raised the demand through President/General Secretary All India Trade Union, Congress H.P. vide demand notice dated 25-6-2017 before the respondents regarding his regularization of services but for today neither the petitioner nor his Advocate has appeared before this Court which clearly shows that at present the petitioner is not interested to pursue his case. Except for the claim petition, there is no other material on record/file which could go to show that the demand raised by the petitioner vide demand notice dated 25-6-2017 is legal and justified. Hence, in the absence of any material on record, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent

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

Announced:
15-12-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

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

Application No. 135 of 2017

Instituted on 25-10-2017

Decided on 19-12-2018

Sonia w/o Shri Makhan Singh r/o # 480 Chandimandir, Gate No.1, P.O Saket, District Panchkula, Haryana . *Petitioner.*

Versus

M/s Health Biotech Ltd., Village Nichli Sandholi, Baddi, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K Khidta, Advocate
For respondent: Shri Vinil Thakur, Advocate

ORDER/AWARD

Briefly, the case of the petitioner is that *w.e.f.* 17-12-2005, she was engaged as worker/helper by the respondent company and had worked as such till 19-1-2016 continuously and the respondent company had issued worker identity card to the petitioner and ESI Card was issued to her by the ESI Corporation. It is further averred that the services of the petitioner were terminated by the respondent *w.e.f.* 19-1-2016 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid to the petitioner despite the fact that the petitioner is a workman as defined under the provisions of the Act. It is also averred that the petitioner worked with the respondent with honesty and dedication and the work of the petitioner was always appreciated by the officials of the respondent company and nothing contrary was ever conveyed to her. That on 5-1-2016, the petitioner received three months notice for terminating her service but without complying the mandatory provisions of the Act, her services had been illegally terminated. That the petitioner visited the office of the respondent number of times after her illegal termination to re-engage her but despite assurance she was not re-engaged. It is averred that the petitioner was forced to file the demand notice before the Labour-cum-Conciliation Officer, Baddi in which the respondent was summoned but the appropriate government has failed to send the case of the petitioner as reference to this Court. That in the

case of the petitioner there is no compliance of sections 25-N 25-F, 25-G and 25-H of the Act, hence, her termination from service is illegal as she had completed 240 days in each calendar year and her junior persons are still working with the respondent company. It is further averred that the petitioner is unemployed after her illegal termination and her termination tantamounts to unfair labour practice of which the petitioner is a victim and the action of the company is against the provisions of the Act. Against this back-drop it has been prayed that the oral termination of the services of the petitioner *w.e.f.* 19-1-2016 be set aside and quashed and the respondent be directed to re-engage the petitioner in service with full back-wages and other service benefits including seniority, continuity and damages to the tune of ₹ 500000/- and litigation cost amounting to ₹ 50000/-.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that the petitioner has not come to this Court with clean hands and the petitioner is gainfully employed. On merits, it has been asserted that the respondent had not passed any order either in writing or orally for termination, retrenchment, dismissal or discharge against the petitioner. It is denied that the petitioner was not allowed to enter the factory gate. It is asserted that the petitioner joined with the respondent and was working with other workers and staff but in the year, 2014 the factory was not able to run due to certain financial problems due to no demand of the medicines manufactured by the respondent and the management pasted a notice for the workers that who so ever is interested to get their full & final financial dues as per the industrial law laid down in the Act, they can get the same from the financial department of the company and some of the workers opted for the scheme and received their full & final financial dues from the factory and others who did not follow the other workers they are still working with the respondent company and the petitioner pressurized the respondent to provide bus facility to her in order to come to the factory for service but due to poor financial position of the company, the respondent is not in a position to provide the bus facility and as such the petitioner stopped reporting in the factory with four other workers and she had filed the demand notice before the Conciliation Officer Baddi and before the Conciliation Officer, the respondent company had submitted that the petitioner is not reporting on duty for the reasons well known to her and she was never terminated by the respondent company and the offer to join the factory was open before the Conciliation Officer and the same will remain open for all times to come and the petitioner is the wrong doer and wants to take the benefits by way of abuse of the process of law and the case of the petitioner does not fall under illegal retrenchment as the respondent management had not terminated her services. It is also asserted that the petitioner is gainfully employed and is earning more than the amount which she was earning from the respondent management. The respondent prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondent.

4. On the pleadings of the parties, the following issues were framed by this Court on 11-7-2018.

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 19-1-2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..OPP.
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ..OPP.
- (3) Whether the claim petition is not maintainable as alleged? ..OPR.

Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the written arguments filed on behalf of the respondent and also gone through the record of the case carefully.

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

Issue No. 1 : Yes

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

Issue No. 3 : No

Relief : Application allowed per operative part of Order/award

REASONS FOR FINDINGS

Issues No. 1 :

7. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and her services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondent and even the respondent had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

8. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who herself had stopped reporting in the factory and had left the job at her own, hence, there is no need to comply with the provisions of the Act.

9. To prove her case, the petitioner stepped into the witness as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as stated in the claim petition. She also tendered in evidence the copy of ESI card Ex. PW-1/B, copy of punch card Ex. PW-1/C, copy of notice dated 5-1-2016 Ex. PW-1/D, copy of demand notice Ex. PW-1/E and copy of letter dated 24-1-2016 Mark PX. In cross-examination, she denied that the respondent had not issued any notice to her on 5-1-2016. She further denied that her services were never terminated by the respondent on 19-1-2016. She also denied that at that time the respondent company was running in losses and it had also a dispute with the Bank. She admitted that her salary was not being paid to her in time. She denied that she had left the job at her own alongwith other workers.

10. PW-2 Shri Kamal Singh, Labour Inspector, Baddi has brought the summoned record and deposed that the demand notice Ex. PW-1/E was raised by the petitioner. He further deposed that notice Ex. PW-2/A was issued to the parties but the respondent employer did not appear in the conciliation proceedings.

11. On the other hand, the respondent examined one Shri Raj Kumar, Manager HR of the respondent company as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein

he reiterated almost all the averments as made in the reply. He also tendered evidence the copy of notice dated 9-12-2011 Mark R-1, copy of application under section 14 of the SRFAESI Act mark R-2 and copies of notices dated 5-12-2011 mark R-3 to mark R-7. In cross-examination, he denied that the petitioner was engaged on 7-12-2005 as worker. He admitted that she had worked till 19-1-2016. He further admitted that the petitioner had completed 240 days in each calendar year. He admitted that she had worked continuously during the aforesaid period. He further admitted that the respondent had not issued any notice to the petitioner for resumption of her duties. He admitted that no enquiry was conducted against the petitioner. He further admitted that the respondent had issued the identity card Ex. PW-1/C to the petitioner. He also admitted that the respondent had issued notice Ex. PW-1/D to the petitioner. He denied that the services of the petitioner were terminated *w.e.f.* 19-1-2016. He admitted that no notice was issued and no compensation was paid to the petitioner prior to her termination. He denied that the petitioner was not taken back in service despite the conciliation proceedings. He further denied that the respondent company never ran in losses. He also denied that no proceedings under SRFAESI Act, against the respondent company is pending in any Court of law. He denied that the petitioner is no gainfully employed. He further denied that the juniors of the petitioner are still working. He also denied that the services of the petitioner were illegally terminated.

12. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner had worked as helper with the respondent company continuously *w.e.f.* the year, 2006 till 19-1-2016. The case of the petitioner is that her services have been terminated illegally by the respondent. However, the learned counsel for the respondent contended that the services of the petitioner were never terminated rather the petitioner herself stopped reporting for duty in the factory along-with four other workers as such she herself had abandoned the job at her own and stopped attending her duty. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

In Buckingham Co. Vs. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools Vs. Ram Surat reported in 2004 (103) FLR 102**. Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee alongwith his intention not to join back. However, in the present case except for the bald statement

of RW-1, there is no cogent and satisfactory evidence on record led by the respondent to prove that the petitioner herself had stopped reporting for duty with an intention not to join back. In my opinion, if the petitioner had failed to report for duty then it was incumbent upon the respondent to have issued the notice to the petitioner for resumption of her duties. However, no such notice has been issued to the petitioner for resumption of her duties as admitted by RW-1 in his cross-examination. Rather, the respondent had issued notice Ex. PW-1/D to the petitioner wherein it has been mentioned that the respondent company was not in a position to work with the petitioner and after three months her full & final dues shall be paid to her. Therefore, in view of the aforesaid notice Ex. PW-1/D also it has been proved on record that the petitioner had never abandoned the job at her own but the respondent had terminated her services. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be said that the petitioner had voluntarily abandoned the job at her own.

13. It is admitted case of the respondent that the petitioner had worked continuously with the respondent *w.e.f.* the year, 2006 till 19-1-2016 and had completed 240 days in each calendar year. RW-1 Shri Raj Kumar admitted in his cross-examination that the petitioner had completed 240 days in each calendar year. He further admitted that the petitioner had worked continuously with the respondent. He also admitted that no notice and compensation was paid to the petitioner. It is also clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor she was paid any compensation in lieu thereof. The services of the petitioner were terminated before one month as well as before the expiry of the period mentioned in the notice Ex. PW-1/D. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd. Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

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

14. In the instant case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, in view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 19-1-2016 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the

services of the petitioner *w.e.f.* 19-1-2016, by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly issue No. 1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

16. Since, I have held under issue No. 1 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity. Moreover, the respondent in its reply had categorically averred that the offer to the petitioner to join in the company will remain open for all times to come.

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

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

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

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

Issue No. 3 :

20. The learned counsel for the respondent contended that the present petition under section 2-A of the Act is not maintainable as the matter has not been referred to this Court by the competent authority and the respondent has not passed any order of termination, retrenchment, dismissal or discharging the petitioner. However, this contention of the learned counsel for the respondent is devoid of any force because in view of my observations under issue No. 1 that *w.e.f.* 19-1-2016, the services of the petitioner were terminated by the respondent and thereafter the petitioner raised the demand notice ex. PW-1/E as stated by PW-2 Labour Inspector, Baddi

in his statement before this Court. He also deposed that after raising the demand notice, the Labour-cum-Conciliation Officer, Baddi had issued notice Ex. PW-2/A to the parties to appear before him, however, the respondent did not appear in the conciliation proceedings. Since, the services of the petitioner were terminated and no decision was taken by the Labour-cum-Conciliation Officer, Baddi with respect to the demand notice Ex. PW-1/E within a period of 45 days from the date of raising the demand notice, hence, the present petition under section 2-A of the Act which has been filed directly before this Court by the petitioner is very much maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

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

Announced in the open Court today on this 19th Day of December, 2018.

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

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

Application No. 136 of 2017

Instituted on 25-10-2017

Decided on 19-12-2018

Deepa w/o Shri Surender Singh, r/o House No. 185 BCW Surajpur, Near Ravi Dass Temple, District Panchkula Haryana . *Petitioner.*

Versus

M/s Health Biotech Ltd. Village Nichli Sandholi, Baddi, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K. Khidta, Advocate

For respondent : Shri Vinil Thakur, Advocate

ORDER/AWARD

Briefly, the case of the petitioner is that *w.e.f.* 19-4-2005, she was engaged as worker/helper by the respondent company and had worked as such till 19-1-2016 continuously and her services were terminated by the respondent *w.e.f.* 19-1-2016 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid to the petitioner despite the fact that the petitioner is a workman as defined under the provisions of the Act. It is also averred that the petitioner worked with the respondent with honesty and dedication and the work of the petitioner was always appreciated by the officials of the respondent company and nothing contrary was ever conveyed to her. That on 5-1-2016, the petitioner received three months notice for terminating her service but without complying the mandatory provisions of the Act, her services had been illegally terminated. That the petitioner visited the office of the respondent number of times after her illegal termination to re-engage her but despite assurance she was not re-engaged. It is averred that the petitioner was forced to file the demand notice before the Labour-cum-Conciliation Officer, Baddi in which the respondent was summoned but the appropriate government has failed to send the case of the petitioner as reference to this Court. That in the case of the petitioner there is no compliance of sections 25-N 25-F, 25-G and 25-H of the Act, hence, her termination from service is illegal as she had completed 240 days in each calendar year and her junior persons are still working with the respondent company. It is further averred that the petitioner is unemployed after her illegal termination and her termination tantamounts to unfair labour practice of which the petitioner is a victim and the action of the company is against the provisions of the Act. Against this back-drop it has been prayed that the oral termination of the services of the petitioner *w.e.f.* 19-1-2016 be set aside and quashed and the respondent be directed to re-engage the petitioner in service with full back-wages and other service benefits including seniority, continuity and damages to the tune of ₹ 500000/- and litigation cost amounting to ₹ 50000/-.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that the petitioner has not come to this Court with clean hands and the petitioner is gainfully employed. On merits, it has been asserted that the respondent had not passed any order either in writing or orally for termination, retrenchment, dismissal or discharge against the petitioner. It is denied that the petitioner was not allowed to enter the factory gate. It is asserted that the petitioner joined with the respondent and was working with other workers and staff but in the year, 2014 the factory was not able to run due to certain financial problems due to no demand of the medicines manufactured by the respondent and the management pasted a notice for the workers that who so ever is interested to get their full & final financial dues as per the industrial law laid down in the Act, they can get the same from the financial department of the company and some of the workers opted for the scheme and received their full & final financial dues from the factory and others who did not follow the other workers they are still working with the respondent company and the petitioner pressurized the respondent to provide bus facility to her in order to come to the factory for service but due to poor financial position of the company, the respondent is not in a position to provide the bus facility and as such the petitioner stopped reporting in the factory with four other workers and she had filed the demand notice before the Conciliation Officer Baddi and before the Conciliation Officer, the respondent company had submitted that the petitioner is not reporting on duty for the reasons well known to her and she was never terminated by the respondent company and the offer to join the factory was open before the Conciliation Officer and the same will remain open for all times to come and the petitioner is the wrong doer and wants to take the benefits by way of abuse of the process of law and the case of the petitioner does not fall under illegal retrenchment as the respondent management had not terminated her services. It is also asserted that the petitioner is gainfully employed and is earning more than the amount

which she was earning from the respondent management. The respondent prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondent.

4. On the pleadings of the parties, the following issues were framed by this Court on 11-7-2018.

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 19-1-2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the claim petition is not maintainable as alleged? . . .*OPR.*

Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the written arguments filed on behalf of the respondent and also gone through the record of the case carefully.

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

Issue No. 1 : Yes

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

Issue No. 3 : No

Relief : Application allowed per operative part of Order/award

REASONS FOR FINDINGS

Issues No. 1 :

7. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and her services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondent and even the respondent had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

8. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who herself had stopped reporting in the factory and had left the job at her own, hence, there is no need to comply with the provisions of the Act.

9. To prove her case, the petitioner stepped into the witness as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as stated in the claim petition. She also tendered in evidence the copy of ESI card Ex. PW-1/B, copy of notice dated 5-1-2016 Ex. PW-1/C, copy of demand notice Ex. PW-1/D and copy of letter dated 12-4-2016 Mark PX. In cross-examination, she denied that the respondent had not issued any notice to her on 5-1-2016. She further denied that her services were never terminated by the respondent on 19-1-2016. She also denied that at that time the respondent company was running in losses and it had also a dispute with the Bank. She admitted that her salary was not being paid to her in time. She denied that she had left the job at her own alongwith other workers.

10. PW-2 Shri Kamal Singh, Labour Inspector, Baddi has brought the summoned record and deposed that the demand notice Ex. PW-1/D was raised by the petitioner. He further deposed that notice Ex. PW-2/A was issued to the parties but the respondent employer did not appear in the conciliation proceedings.

11. On the other hand, the respondent examined one Shri Raj Kumar, Manager HR of the respondent company as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered evidence the copy of notice dated 9-12-2011 Mark R-1, copy of application under section 14 of the SRFAESI Act mark R-2 and copies of notices dated 5-12-2011 mark R-3 to mark R-7. In cross-examination, he denied that the petitioner was engaged on 19-4-2005 as worker. He admitted that she had worked till 19-1-2016. He further admitted that the petitioner had completed 240 days in each calendar year. He admitted that she had worked continuously during the aforesaid period. He further admitted that the respondent had not issued any notice to the petitioner for resumption of her duties. He admitted that no enquiry was conducted against the petitioner. He further admitted that the respondent had issued notice Ex. PW-1/C to the petitioner. He denied that the services of the petitioner were terminated *w.e.f.* 19-1-2016. He admitted that no notice was issued and no compensation was paid to the petitioner prior to her termination. He denied that the petitioner was not taken back in service despite the conciliation proceedings. He further denied that the respondent company never ran in losses. He also denied that no proceedings under SRFAESI Act, against the respondent company is pending in any Court of law. He denied that the petitioner is no gainfully employed. He further denied that the juniors of the petitioner are still working. He also denied that the services of the petitioner were illegally terminated.

12. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner had worked as worker with the respondent company continuously *w.e.f.* the year, 2006 till 19-1-2016. The case of the petitioner is that her services have been terminated illegally by the respondent. However, the learned counsel for the respondent contended that the services of the petitioner were never terminated rather the petitioner herself stopped reporting for duty in the factory alongwith four other workers as such she herself had abandoned the job at her own and stopped attending her duty. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

In Buckingham Co. Vs. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools Vs. Ram Surat reported in 2004 (103) FLR 102.**

Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee along-with his intention not to join back. However, in the present case except for the bald statement of RW-1, there is no cogent and satisfactory evidence on record led by the respondent to prove that the petitioner herself had stopped reporting for duty with an intention not to join back. In my opinion, if the petitioner had failed to report for duty then it was incumbent upon the respondent to have issued the notice to the petitioner for resumption of her duties. However, no such notice has been issued to the petitioner for resumption of her duties as admitted by RW-1 in his cross-examination. Rather, the respondent had issued notice Ex. PW-1/C to the petitioner wherein it has been mentioned that the respondent company was not in a position to work with the petitioner and after three months her full & final dues shall be paid to her. Therefore, in view of the aforesaid notice Ex. PW-1/C also it has been proved on record that the petitioner had never abandoned the job at her own but the respondent had terminated her services. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be said that the petitioner had voluntarily abandoned the job at her own.

13. It is admitted case of the respondent that the petitioner had worked continuously with the respondent *w.e.f.* the year, 2006 till 19-1-2016 and had completed 240 days in each calendar year. RW-1 Shri Raj Kumar admitted in his cross-examination that the petitioner had completed 240 days in each calendar year. He further admitted that the petitioner had worked continuously with the respondent. He also admitted that no notice and compensation was paid to the petitioner. It is also clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor she was paid any compensation in lieu thereof. The services of the petitioner were terminated before one month as well as before the expiry of the period mentioned in the notice Ex. PW-1/C. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

"34. The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25-F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove

the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25-F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25-F clauses (a) and (c) of the I.D. Act which are mandatory in law."

14. In the instant case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 19-1-2016 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 19-1-2016, by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly issue No. 1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

16. Since, I have held under issue No. 1 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity. Moreover, the respondent in its reply had categorically averred that the offer to the petitioner to join in the company will remain open for all times to come.

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

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

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

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

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

Issue No. 3 :

20. The learned counsel for the respondent contended that the present petition under section 2-A of the Act is not maintainable as the matter has not been referred to this Court by the competent authority and the respondent has not passed any order of termination, retrenchment, dismissal or discharging the petitioner. However, this contention of the learned counsel for the respondent is devoid of any force because in view of my observations under issue No. 1 that *w.e.f.* 19-1-2016, the services of the petitioner were terminated by the respondent and thereafter the petitioner raised the demand notice Ex. PW-1/D as stated by PW-2 Labour Inspector, Baddi in his statement before this Court. He also deposed that after raising the demand notice, the Labour-cum-Conciliation Officer, Baddi had issued notice Ex. PW-2/A to the parties to appear before him, however, the respondent did not appear in the conciliation proceedings. Since, the services of the petitioner were terminated and no decision was taken by the Labour-cum-Conciliation Officer, Baddi with respect to the demand notice Ex. PW-1/D within a period of 45 days from the date of raising the demand notice, hence, the present petition under section 2-A of the Act which has been filed directly before this Court by the petitioner is very much maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

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

Announced in the open Court today on this 19th Day of December, 2018.

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

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

Application No. 133 of 2017

Instituted on 25-10-2017

Decided on 19-12-2018

Ganga Devi w/o Shri Dev Narayan Jha r/o Village bath, P.O. & Tehsil Madheypur, District Madheypur, Bihar . .Petitioner.

Versus

M/s Health Biotech Ltd., Village Nichli Sandholi, Baddi, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

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

For respondent : Shri Vinil Thakur, Advocate.

ORDER/AWARD

Briefly, the case of the petitioner is that *w.e.f.* 17-1-2006, she was engaged as worker/helper by the respondent company and had worked as such till 19-1-2016 continuously and the respondent company had issued worker identity card to the petitioner and ESI Card was issued to her by the ESI Corporation. It is further averred that the services of the petitioner were terminated by the respondent *w.e.f.* 19-1-2016 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid to the petitioner despite the fact that the petitioner is a workman as defined under the provisions of the Act. It is also averred that the petitioner worked with the respondent with honesty and dedication and the work of the petitioner was always appreciated by the officials of the respondent company and nothing contrary was ever conveyed to her. That on 5-1-2016, the petitioner received three months notice for terminating her service but without complying the mandatory provisions of the Act, her services had been illegally terminated. That the petitioner visited the office of the respondent number of times after her illegal termination to re-engage her but despite assurance she was not re-engaged. It is averred that the petitioner was forced to file the demand notice before the Labour-cum-Conciliation Officer, Baddi in which the respondent was summoned and the petitioner again filed the demand notice on 3-10-2016 but the appropriate government has failed to send the case of the petitioner as reference to this Court. That in the case of the petitioner there is no compliance of sections 25-N, 25-F, 25-G and 25-H of the Act, hence, her termination from service is illegal as she had completed 240 days in each calendar year and her junior persons are still working with the respondent company. It is further averred that the petitioner is unemployed after her illegal termination and her termination tantamounts to unfair labour practice of which the petitioner is a victim and the action of the company is against the provisions of the Act. Against this back-drop it has been prayed that the oral termination of the services of the petitioner *w.e.f.* 19-1-2016 be set aside and quashed and the respondent be directed to re-engage the petitioner in service with full back-wages and other service benefits including seniority, continuity and damages to the tune of ₹ 500000/- and litigation cost amounting to ₹ 50000/-.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that the petitioner has not come to this Court with clean hands and the petitioner is gainfully employed. On merits, it has been asserted that the respondent had not passed any order either in writing or orally for termination, retrenchment, dismissal or discharge against the petitioner. It is denied that the petitioner was not allowed to enter the factory gate. It is asserted that the petitioner joined with the respondent and was working with other workers and staff but in the year, 2014 the factory was not able to run due to certain financial problems due to no demand of the medicines manufactured by

the respondent and the management pasted a notice for the workers that who so ever is interested to get their full & final financial dues as per the industrial law laid down in the Act, they can get the same from the financial department of the company and some of the workers opted for the scheme and received their full & final financial dues from the factory and others who did not follow the other workers they are still working with the respondent company and the petitioner pressurized the respondent to provide bus facility to her in order to come to the factory for service but due to poor financial position of the company, the respondent is not in a position to provide the bus facility and as such the petitioner stopped reporting in the factory with four other workers and she had filed the demand notice before the Conciliation Officer Baddi and before the Conciliation Officer, the respondent company had submitted that the petitioner is not reporting on duty for the reasons well known to her and she was never terminated by the respondent company and the offer to join the factory was open before the Conciliation Officer and the same will remain open for all times to come and the petitioner is the wrong doer and wants to take the benefits by way of abuse of the process of law and the case of the petitioner does not fall under illegal retrenchment as the respondent management had not terminated her services. It is also asserted that the petitioner is gainfully employed and is earning more than the amount which she was earning from the respondent management. The respondent prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondent.

4. On the pleadings of the parties, the following issues were framed by this Court on 11-7-2018 :

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 19-1-2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the claim petition is not maintainable as alleged? . . .*OPR.*

Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the written arguments filed on behalf of the respondent and also gone through the record of the case carefully.

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

Issue No. 1 : Yes

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

Issue No. 3 : No

Relief : Application allowed per operative part of Order/award.

REASONS FOR FINDINGS

Issues No. 1 :

7. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and her services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondent and even the respondent had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

8. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who herself had stopped reporting in the factory and had left the job at her own, hence, there is no need to comply with the provisions of the Act.

9. To prove her case, the petitioner stepped into the witness as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as stated in the claim petition. She also tendered in evidence the copy of her identity card Ex. PW- 1/B, the copy of ESI card Ex. PW-1/C, copy of notice dated 5-1-2016 Ex. PW-1/D, copy of punch card Ex. PW-1/E, copy of demand notice Ex. PW-1/F and copy of letter dated 24-2-2016 Mark PX. In cross-examination, she denied that the respondent had not issued any notice to her on 5-1-2016. She further denied that her services were never terminated by the respondent on 19-1-2016. She also denied that at that time the respondent company was running in losses and it had also a dispute with the Bank. She admitted that her salary was not being paid to her in time. She denied that she had left the job at her own alongwith other workers.

10. PW-2 Shri Kamal Singh, Labour Inspector, Baddi has brought the summoned record and deposed that the demand notice Ex. PW-2/A was raised by the petitioner. He further deposed that notice Ex. PW-2/B was issued to the parties but the respondent employer did not appear in the conciliation proceedings.

11. On the other hand, the respondent examined one Shri Raj Kumar, Manager HR of the respondent company as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered evidence the copy of notice dated 9-12-2011 Mark R-1, copy of application under section 14 of the SRFAESI Act mark R-2 and copies of notices dated 5-12-2011 mark R-3 to mark R-7. In cross-examination, he admitted that the petitioner was engaged on 17-1-2006 as worker and she worked till 19-1-2016. He further admitted that the petitioner had completed 240 days in each calendar year. He admitted that she had worked continuously during the aforesaid period. He further admitted that the respondent had not issued any notice to the petitioner for resumption of her duties. He admitted that no enquiry was conducted against the petitioner. He further admitted that the respondent had issued the identity card Ex. PW-1/B to the petitioner. He also admitted that the respondent had issued notice Ex. PW-1/D to the petitioner. He denied that the services of the petitioner were terminated *w.e.f.* 19-1-2016. He admitted that no notice was issued and no compensation was paid to the petitioner prior to her termination. He also admitted that the petitioner had raised the demand notice Ex. PW-1/F before the Labour Inspector, Baddi. He denied that the petitioner was not taken back in service despite the conciliation proceedings. He further denied that the respondent company never ran in losses. He also denied that no proceedings under SRFAESI Act, against the respondent company is pending in any Court of law. He denied that the petitioner is no gainfully employed. He further denied that the juniors of

the petitioner are still working. He also denied that the services of the petitioner were illegally terminated.

12. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner had worked as helper with the respondent company continuously *w.e.f.* 17-1-2006 till 19-1-2016. The case of the petitioner is that her services have been terminated illegally by the respondent. However, the learned counsel for the respondent contended that the services of the petitioner were never terminated rather the petitioner herself stopped reporting for duty in the factory alongwith four other workers as such she herself had abandoned the job at her own and stopped attending her duty. Abandonment of service has not been defined in the Act. In a case titled as **G.T. Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

In Buckingham Co. Vs. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools Vs. Ram Surat reported in 2004 (103) FLR 102**. Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee alongwith his intention not to join back. However, in the present case except for the bald statement of RW-1, there is no cogent and satisfactory evidence on record led by the respondent to prove that the petitioner herself had stopped reporting for duty with an intention not to join back. In my opinion, if the petitioner had failed to report for duty then it was incumbent upon the respondent to have issued the notice to the petitioner for resumption of her duties. However, no such notice has been issued to the petitioner for resumption of her duties as admitted by RW-1 in his cross-examination. Rather, the respondent had issued notice Ex. PW-1/D to the petitioner wherein it has been mentioned that the respondent company was not in a position to work with the petitioner and after three months her full & final dues shall be paid to her. Therefore, in view of the aforesaid notice Ex. PW-1/D also it has been proved on record that the petitioner had never abandoned the job at her own but the respondent had terminated her services. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be said that the petitioner had voluntarily abandoned the job at her own.

13. It is admitted case of the respondent that the petitioner had worked continuously with the respondent *w.e.f.* 17-1-2006 till 19-1-2016 meaning thereby that she had completed 240 days

in each calendar year and in preceding twelve months before her termination. RW-1 Shri Raj Kumar admitted in his cross-examination that the petitioner had worked continuously during the aforesaid period. He also admitted that no notice and compensation was paid to the petitioner. It is also clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor she was paid any compensation in lieu thereof. The services of the petitioner were terminated before one month as well as before the expiry of the period mentioned in the notice Ex. PW-1/D. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

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

14. In the instant case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, in view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 19-1-2016 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 19-1-2016, by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly issue No.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

16. Since, I have held under issue No. 1 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity. Moreover, the respondent in its reply had categorically averred that the offer to the petitioner to join in the company will remain open for all times to come.

17. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the

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

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

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

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

Issue No. 3 :

20. The learned counsel for the respondent contended that the present petition under section 2-A of the Act is not maintainable as the matter has not been referred to this Court by the competent authority and the respondent has not passed any order of termination, retrenchment, dismissal or discharging the petitioner. However, this contention of the learned counsel for the respondent is devoid of any force because in view of my observations under issue No. 1 that *w.e.f.* 19-1-2016, the services of the petitioner were terminated by the respondent and thereafter the petitioner raised the demand notice Ex. PW-2/A as stated by PW-2 Labour Inspector, Baddi in his statement before this Court. He also deposed that after raising the demand notice, the Labour-cum-Conciliation officer, Baddi had issued notice Ex. PW-2/B to the parties to appear before him, however, the respondent did not appear in the conciliation proceedings. Since, the services of the petitioner were terminated and no decision was taken by the Labour-cum-Conciliation Officer, Baddi with respect to the demand notice Ex. PW-2/A within a period of 45 days from the date of raising the demand notice, hence, the present petition under section 2-A of the Act which has been filed directly before this Court by the petitioner is very much maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority. However the petitioner is not entitled to back wages as such

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

Announced in the open Court today on this 19th Day of December, 2018.

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

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

Application No. 134 of 2017

Instituted on 25-10-2017

Decided on 19-12-2018

Bindu w/o Shri Shambu Tiwari, r/o House No. 238-A, Sector-19 Panchkula, District
Panchkula Haryana . *Petitioner.*

M/s Health Biotech Ltd., Village Nichli Sandholi, Baddi, Tehsil Nalagarh, District Solan,
H.P. through its Managing Director . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidta, Advocate
For respondent : Shri Vinil Thakur, Advocate

ORDER/AWARD

Briefly, the case of the petitioner is that *w.e.f.* 19-12-2005, she was engaged as worker/helper by the respondent company and had worked as such till 19-1-2016 continuously and the respondent company had issued worker identity card to the petitioner and ESI Card was issued to her by the ESI Corporation. It is further averred that the services of the petitioner were terminated by the respondent *w.e.f.* 19-1-2016 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid to the petitioner despite the fact that the petitioner is a workman as defined under the provisions of the Act. It is also averred that the petitioner worked with the respondent with honesty and dedication and the work of the petitioner was always appreciated by the officials of the respondent company and nothing contrary was ever conveyed to her. That on 5-1-2016, the petitioner received three months notice for terminating her service but without complying the mandatory provisions of the Act, her services had been illegally terminated. That the petitioner visited the office of the respondent number of times after her illegal termination to re-engage her but despite assurance she was not re-engaged. It is averred that the petitioner was forced to file the demand notice before the Labour-cum-Conciliation Officer, Baddi in which the respondent was summoned and the petitioner again filed the demand notice on 3-10-2016 but the appropriate government has failed to send the case of the petitioner as

reference to this Court. That in the case of the petitioner there is no compliance of sections 25-N, 25-F, 25-G and 25-H of the Act, hence, her termination from service is illegal as she had completed 240 days in each calendar year and her junior persons are still working with the respondent company. It is further averred that the petitioner is unemployed after her illegal termination and her termination tantamounts to unfair labour practice of which the petitioner is a victim and the action of the company is against the provisions of the Act. Against this back-drop it has been prayed that the oral termination of the services of the petitioner *w.e.f.* 19-1-2016 be set aside and quashed and the respondent be directed to re-engage the petitioner in service with full back-wages and other service benefits including seniority, continuity, damages to the tune of ₹ 500000/- and litigation cost amounting to ₹ 50000/-.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, that the petitioner has not come to this Court with clean hands and the petitioner is gainfully employed. On merits, it has been asserted that the respondent had not passed any order either in writing or orally for termination, retrenchment, dismissal or discharge against the petitioner. It is denied that the petitioner was not allowed to enter the factory gate. It is asserted that the petitioner joined with the respondent and was working with other workers and staff but in the year, 2014 the factory was not able to run due to certain financial problems due to no demand of the medicines manufactured by the respondent and the management pasted a notice for the workers that who so ever is interested to get their full & final financial dues as per the industrial law laid down in the Act, they can get the same from the financial department of the company and some of the workers opted for the scheme and received their full & final financial dues from the factory and others who did not follow the other workers they are still working with the respondent company and the petitioner pressurized the respondent to provide bus facility to her in order to come to the factory for service but due to poor financial position of the company, the respondent is not in a position to provide the bus facility and as such the petitioner stopped reporting in the factory with four other workers and she had filed the demand notice before the Conciliation Officer Baddi and before the Conciliation Officer, the respondent company had submitted that the petitioner is not reporting on duty for the reasons well known to her and she was never terminated by the respondent company and the offer to join the factory was open before the Conciliation officer and the same will remain open for all times to come and the petitioner is the wrong doer and wants to take the benefits by way of abuse of the process of law and the case of the petitioner does not fall under illegal retrenchment as the respondent management had not terminated her services. It is also asserted that the petitioner is gainfully employed and is earning more than the amount which she was earning from the respondent management. The respondent prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondent.

4. On the pleadings of the parties, the following issues were framed by this Court on 11-7-2018 :

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 19-1-2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ..OPP.
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ..OPP.
- (3) Whether the claim petition is not maintainable as alleged? ..OPR.

Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the written arguments filed on behalf of the respondent and also gone through the record of the case carefully.

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

Issue No. 1 : Yes

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

Issue No. 3 : No.

Relief : Application allowed per operative part of Order/award

REASONS FOR FINDINGS

Issues No. 1 :

7. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and her services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondent and even the respondent had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

8. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who herself had stopped reporting in the factory and had left the job at her own, hence, there is no need to comply with the provisions of the Act.

9. To prove her case, the petitioner stepped into the witness as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as stated in the claim petition. She also tendered in evidence the copy of her identity card Ex. PW-1/B, the copy of ESI card Ex. PW-1/C, copy of punch card Ex. PW-1/D, copy of notice dated 5-1-2016 Ex. PW-1/E, copy of demand notice Ex. PW-1/F and copy of additional demand notice Ex. PW-1/G. In cross-examination, she denied that the respondent had not issued any notice to her on 5-1-2016. She further denied that her services were never terminated by the respondent on 19-1-2016. She also denied that at that time the respondent company was running in losses and it had also a dispute with the Bank. She admitted that her salary was not being paid to her in time. She denied that she had left the job at her own alongwith other workers.

10. PW-2 Shri Kamal Singh, Labour Inspector, Baddi has brought the summoned record and deposed that the demand notice Ex. PW-1/F was raised by the petitioner. He further deposed that notice Ex. PW-2/A was issued to the parties but the respondent employer did not appear in the conciliation proceedings.

11. On the other hand, the respondent examined one Shri Raj Kumar, Manager HR of the respondent company as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein

he reiterated almost all the averments as made in the reply. He also tendered evidence the copy of notice dated 9-12-2011 Mark R-1, copy of application under section 14 of the SRFAESI Act mark R-2 and copies of notices dated 5-12-2011 mark R-3 to mark R-7. In cross-examination, he denied that the petitioner was engaged on 19-12-2005 as worker. He admitted that she had worked till 19-1-2016. He further admitted that the petitioner had completed 240 days in each calendar year. He admitted that she had worked continuously during the aforesaid period. He further admitted that the respondent had not issued any notice to the petitioner for resumption of her duties. He admitted that no enquiry was conducted against the petitioner. He further admitted that the respondent had issued the identity card Ex. PW-1/B to the petitioner. He also admitted that the respondent had issued notice Ex. PW-1/E to the petitioner. He denied that the services of the petitioner were terminated *w.e.f.* 19-1-2016. He admitted that no notice was issued and no compensation was paid to the petitioner prior to her termination. He denied that the petitioner was not taken back in service despite the conciliation proceedings. He further denied that the respondent company never ran in losses. He also denied that no proceedings under SRFAESI Act, against the respondent company is pending in any Court of law. He denied that the petitioner is no gainfully employed. He further denied that the juniors of the petitioner are still working. He also denied that the services of the petitioner were illegally terminated.

12. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner had worked as helper with the respondent company continuously *w.e.f.* the year, 2006 till 19-1-2016. The case of the petitioner is that her services have been terminated illegally by the respondent. However, the learned counsel for the respondent contended that the services of the petitioner were never terminated rather the petitioner herself stopped reporting for duty in the factory alongwith four other workers as such she had abandoned the job at her own. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

In Buckingham Co. Vs. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools Vs. Ram Surat reported in 2004 (103) FLR 102**.

Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee alongwith his intention not to join back.

However, in the present case except for the bald statement of RW-1, there is no cogent and satisfactory evidence on record led by the respondent to prove that the petitioner herself had stopped attending her duty with an intention not to join back. In my opinion, if the petitioner started absenting from duty then it was incumbent upon the respondent to have issued the notice to her for resumption of her duties. However, no such notice has been issued to the petitioner for resumption of her duties as admitted by RW-1 in his cross-examination. Rather, the respondent had issued notice dt. 05-01-2016 Ex. PW-1/E to the petitioner wherein it has been mentioned that since the respondent company was not in a position to work with the petitioner as such after three months her full & final dues shall be paid to her. Therefore, in view of the aforesaid notice Ex. PW-1/E also, it has been proved on record that the petitioner had never abandoned the job at her own rather the respondent had terminated her services. Hence it cannot be said that the petitioner had voluntarily abandoned the job at her own as contended by the Id. Counsel for the respondent.

13. It is admitted case of the respondent that the petitioner had worked continuously with the respondent *w.e.f.* the year, 2006 till 19-1-2016 and had completed 240 days in each calendar year. RW-1 Shri Raj Kumar admitted in his cross-examination that the petitioner had completed 240 days in each calendar year. He further admitted that the petitioner had worked continuously with the respondent. It is also clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor she was paid any compensation in lieu thereof. The services of the petitioner were terminated before one month as well as before the expiry of the period of notice Ex. PW-2/E. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

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

14. In the instant case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 19-1-2016 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the

services of the petitioner *w.e.f.* 19-1-2016, by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly issue No. 1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

16. Since, I have held under issue No. 1 above that the termination of the services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified. Hence, the petitioner is held entitled to reinstatement in service with seniority and continuity. Moreover the respondent in its reply had categorically averred that the offer to the petitioner to join in the company will remain open for all times to come.

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

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

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

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

Issue No. 3 :

20. The learned counsel for the respondent contended that the present petition under section 2-A of the Act is not maintainable as the respondent has not passed any order of termination, retrenchment, dismissal or discharging the petitioner and the matter has not been referred to this Court by the competent authority. However, this contention of the learned counsel for the respondent is devoid of any force in view of my observations under issue No. 1 that the services of the petitioner were terminated by the respondent *w.e.f.* 19-1-2016. The perusal of the evidence on record reveals that after her termination, the petitioner had raised the

demand notice Ex. PW-1/F as stated by PW-2 Labour Inspector, Baddi in his statement before this Court. He also deposed that after raising the demand notice by the petitioner, the respondent did not appear in the conciliation proceedings, despite issuance of notice Ex. PW-2/A to the parties and the proceedings were closed. Since, the services of the petitioner were terminated and no decision was taken by the Labour-cum-Conciliation Officer, Baddi on the demand notice Ex. PW-1/F raised by the petitioner within a period of 45 days from the date of raising the dispute as such the present application under section 2-A of the Act which has been filed directly before this Court by the petitioner is very much maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

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

Announced in the open Court today on this 19th Day of December, 2018.

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

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

Application No. 137 of 2017

Instituted on 25-10-2017

Decided on 19-12-2018

Ram Ashray s/o Shri Sukh Ram r/o House No. 358, Ward No. 2, Ambedkar Colony Dhakoli, SAS near (Mohali) Punjab . *Petitioner.*

Versus

M/s Health Biotech Ltd. Village Nichli Sandholi, Baddi, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K. Khidtta, Advocate

For respondent : Shri Vinil Thakur, Advocate

ORDER/AWARD

Briefly, the case of the petitioner is that *w.e.f.* 5-5-2007, he was engaged as Tailor by the respondent company and had worked as such till 19-1-2016 continuously and his services were terminated by the respondent *w.e.f.* 19-1-2016 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid to the petitioner despite the fact that the petitioner is a workman as defined under the provisions of the Act. It is also averred that the petitioner worked with the respondent with honesty and dedication and the work of the petitioner was always appreciated by the officials of the respondent company and nothing contrary was ever conveyed to her. That on 5-1-2016, the petitioner received three months notice for terminating his service but without complying the mandatory provisions of the Act, his services had been illegally terminated. That the petitioner visited the office of the respondent number of times after his illegal termination to re-engage him but despite assurance he was not re-engaged. It is averred that the petitioner was forced to file the demand notice before the Labour-*cum*-Conciliation Officer, Baddi in which the respondent was summoned but the appropriate government has failed to send the case of the petitioner as reference to this Court. That in the case of the petitioner there is no compliance of sections 25-N, 25-F, 25-G and 25-H of the Act, hence, his termination from service is illegal as he had completed 240 days in each calendar year and his junior persons are still working with the respondent company. It is further averred that the petitioner is unemployed after his illegal termination and his termination tantamounts to unfair labour practice of which the petitioner is a victim and the action of the company is against the provisions of the Act. Against this back-drop it has been prayed that the oral termination of the services of the petitioner *w.e.f.* 19-1-2016 be set aside and quashed and the respondent be directed to re-engage the petitioner in service with full backwages and other service benefits including seniority, continuity and damages to the tune of ₹ 500000/- and litigation cost amounting to ₹ 50000/-.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, that the petitioner has not come to this Court with clean hands and the petitioner is gainfully employed. On merits, it has been asserted that the respondent had not passed any order either in writing or orally for termination, retrenchment, dismissal or discharge against the petitioner. It is denied that the petitioner was not allowed to enter the factory gate. It is asserted that the petitioner joined with the respondent and was working with other workers and staff but in the year, 2014 the factory was not able to run due to certain financial problems due to no demand of the medicines manufactured by the respondent and the management pasted a notice for the workers that who so ever is interested to get their full & final financial dues as per the industrial law laid down in the Act, they can get the same from the financial department of the company and some of the workers opted for the scheme and received their full & final financial dues from the factory and others who did not follow the other workers they are still working with the respondent company and the petitioner pressurized the respondent to provide bus facility to her in order to come to the factory for service but due to poor financial position of the company, the respondent is not in a position to provide the bus facility and as such the petitioner stopped reporting in the factory with four other workers and she had filed the demand notice before the Conciliation Officer Baddi and before the Conciliation Officer, the respondent company had submitted that the petitioner is not reporting on duty for the reasons well known to her and she was never terminated by the respondent company and the offer to join the factory was open before the Conciliation officer and the same will remain open for all times to come and the petitioner is the wrong doer and wants to take the benefits by way of abuse of the process of law and the case of the petitioner does not fall under illegal retrenchment as the respondent management had not terminated his services. It is also asserted that the petitioner is gainfully employed and is earning more than the amount

which he was earning from the respondent management. The respondent prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondent.

4. On the pleadings of the parties, the following issues were framed by this Court on 11-7-2018 :

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 19-1-2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the claim petition is not maintainable as alleged? . . .*OPR.*

Relief

5. Besides having heard the learned counsel for the parties, I have also gone through the written arguments filed on behalf of the respondent and also gone through the record of the case carefully.

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

Issue No. 1 : Yes

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

Issue No. 3 : No

Relief : Application allowed per operative part of Order/award

REASONS FOR FINDINGS

Issues No. 1 :

7. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and his services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act. He further contended the juniors to the petitioner are still working with the respondent and even the respondent had engaged fresh hands after the termination of the services of the petitioner in violation of the provisions of sections 25-G & 25-H of the Act.

8. On the other hand, the learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself had stopped reporting in the factory and had left the job at his own, hence, there is no need to comply with the provisions of the Act.

9. To prove his case, the petitioner stepped into the witness as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of ESI card Ex. PW-1/B, copy of notice dated 5-1-2016 Ex. PW-1/C, copy of demand notice Ex. PW-1/D, copy of punch card Mark PX and copy of letter dated 12-4-2016 Mark PX-1. In cross-examination, he denied that the respondent had not issued any notice to him on 5-1-2016. He further denied that his services were never terminated by the respondent on 19-1-2016. He also denied that at that time the respondent company was running in losses and it had also a dispute with the Bank. He admitted that his salary was not being paid to him in time. He denied that she had left the job at her own alongwith other workers.

10. PW-2 Shri Kamal Singh, Labour Inspector, Baddi has brought the summoned record and deposed that the demand notice Ex. PW-1/D was raised by the petitioner. He further deposed that notice Ex. PW-2/A was issued to the parties but the respondent employer did not appear in the conciliation proceedings.

11. On the other hand, the respondent examined one Shri Raj Kumar, Manager HR of the respondent company as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered evidence the copy of notice dated 9-12-2011 Mark R-1, copy of application under section 14 of the SRFAESI Act mark R-2 and copies of notices dated 5-12-2011 mark R-3 to mark R-7. In cross-examination, he admitted that the petitioner was engaged on 5-5-2007 as worker and worked as such till 19-1-2016. He further admitted that the petitioner had completed 240 days in each calendar year. He admitted that he had worked continuously during the aforesaid period. He further admitted that the respondent had not issued any notice to the petitioner for resumption of his duties. He admitted that no enquiry was conducted against the petitioner. He further admitted that the respondent had issued notice Ex. PW-1/C to the petitioner. He denied that the services of the petitioner were terminated *w.e.f.* 19-1-2016. He admitted that no notice was issued and no compensation was paid to the petitioner prior to his termination. He denied that the petitioner was not taken back in service despite the conciliation proceedings. He further denied that the respondent company never ran in losses. He also denied that no proceedings under SRFAESI Act, against the respondent company is pending in any Court of law. He denied that the petitioner is no gainfully employed. He further denied that the juniors of the petitioner are still working. He also denied that the services of the petitioner were illegally terminated.

12. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner had worked as worker with the respondent company continuously *w.e.f.* 5-5-2007 till 19-1-2016. The case of the petitioner is that his services have been terminated illegally by the respondent. However, the learned counsel for the respondent contended that the services of the petitioner were never terminated rather the petitioner himself stopped reporting for duty in the factory alongwith four other workers as such he himself had abandoned the job at his own and stopped attending his duty. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

In Buckingham Co. Vs. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools Vs. Ram Surat reported in 2004 (103) FLR 102**. Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee along-with his intention not to join back. However, in the present case except for the bald statement of RW- 1, there is no cogent and satisfactory evidence on record led by the respondent to prove that the petitioner himself had stopped reporting for duty with an intention not to join back. In my opinion, if the petitioner had failed to report for duty then it was incumbent upon the respondent to have issued the notice to the petitioner for resumption of his duties. However, no such notice has been issued to the petitioner for resumption of his duties as admitted by RW-1 in his cross-examination. Rather, the respondent had issued notice Ex. PW-1/C to the petitioner wherein it has been mentioned that the respondent company was not in a position to work with the petitioner and after three months his full & final dues shall be paid to him. Therefore, in view of the aforesaid notice Ex. PW-1/C also it has been proved on record that the petitioner had never abandoned the job at his own but the respondent had terminated his services. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be said that the petitioner had voluntarily abandoned the job at her own.

13. It is admitted case of the respondent that the petitioner had worked continuously with the respondent *w.e.f.* 5-5-2007 till 19-1-2016 and had completed 240 days in each calendar year. RW-1 Shri Raj Kumar admitted in his cross-examination that the petitioner had completed 240 days in each calendar year. He further admitted that the petitioner had worked continuously with the respondent. He also admitted that no notice and compensation was paid to the petitioner. It is also clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor he was paid any compensation in lieu thereof. The services of the petitioner were terminated before one month as well as before the expiry of the period mentioned in the notice Ex. PW-1/C. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

"34. The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have

been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

14. In the instant case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 19-1-2016 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

15. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 19-1-2016, by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly issue No. 1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

16. Since I have held under issue No. 1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity. Moreover, the respondent in its reply had categorically averred that the offer to the petitioner to join in the company will remain open for all times to come.

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

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

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

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

Issue No. 3 :

20. The learned counsel for the respondent contended that the present petition under section 2-A of the Act is not maintainable as the matter has not been referred to this Court by the competent authority and the respondent has not passed any order of termination, retrenchment, dismissal or discharging the petitioner. However, this contention of the learned counsel for the respondent is devoid of any force because in view of my observations under issue No. 1 that *w.e.f.* 19-1-2016, the services of the petitioner were terminated by the respondent and thereafter the petitioner raised the demand notice Ex. PW-1/D as stated by PW-2 Labour Inspector, Baddi in his statement before this Court. He also deposed that after raising the demand notice, the Labour-cum-Conciliation officer, Baddi had issued notice Ex. PW-2/A to the parties to appear before him, however, the respondent did not appear in the conciliation proceedings. Since, the services of the petitioner were terminated and no decision was taken by the Labour-cum-Conciliation Officer, Baddi with respect to the demand notice Ex. PW-1/D within a period of 45 days from the date of raising the demand notice, hence, the present petition under section 2-A of the Act which has been filed directly before this Court by the petitioner is very much maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

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

Announced in the open Court today on this 19th Day of December, 2018.

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

5-11-2018

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 10.20 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 12.30 P.M. Case called again but neither the petitioner nor her counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AFTER LUNCH

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

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

"Whether termination of the services Smt. Kanta w/o Shri Ashok Kumar r/o 124, Sunder Building Krishna Nagar, Urban Shimla, H.P. by the Principal, Convent of Jesus and Merry, Navbahar, Shimla-2, H.P. w.e.f. 31-12-2017, after completion of more than 240 days each years without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, backwages and compensation the aggrieved workman is entitled to from the above employer/management?."

From the aforesaid reference, it is clear that the petitioner has alleged her termination w.e.f. 31-12-2017 to be illegal and unjustified but today she has failed to appear before this Court and to file statement of claim in support of her contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally w.e.f. 31-12-2017 without complying with the provisions of Industrial Disputes Act, 1947. Hence, in the absence of the petitioner, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
5-11-2018.

Sd/-
(SUSHIL KUKREJA),
*Presiding Judge,
Labour Court, Shimla.*

5-11-2018

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 10.10 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AGAIN

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 12.20 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

CASE CALLED AFTER LUNCH

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 3.55 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date Shri Deepak Thakur, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed two opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether termination of the service Shri Rajinder Kumar s/o Shri Ram Krishan, r/o Village Kandi, P.O. Kairkoti, Tehsil & Distt. Shimla, H.P. by the Principal, Convent of Jesus and Merry, Navbahar, Shimla-2, H.P. w.e.f. 18-4-2017 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, back wages and compensation the aggrieved workman is entitled to from the above employer/management?"

From the aforesaid reference, it is clear that the petitioner has alleged his termination w.e.f. 18-4-2017 to be illegal and unjustified but today he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no

material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 18-4-2017 without complying with the provisions of Industrial Disputes Act, 1947. Hence, in the absence of the petitioner, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
5-11-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

5-11-2018

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 10.15 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 12.25 P.M. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AFTER LUNCH

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 4.00 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date Shri Deepak

Thakur, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed two opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether termination of the services Shri Suleman Uraon s/o Shri Somra Uraon, r/o Shakuntla Niwas, Lower Sangti, Sanjauli, Shimla-6 by the Principal, Convent of Jesus and Merry, Navbahar, Shimla-2, H.P. w.e.f. 31-12-2017, after completion of more than 240 days each years, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, back wages and compensation the aggrieved workman is entitled to from the above employer/management?"

From the aforesaid reference, it is clear that the petitioner has alleged his termination w.e.f. 31-12-2017 to be illegal and unjustified but today he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally w.e.f. 31-12-2017 without complying with the provisions of Industrial Disputes Act, 1947. Hence, in the absence of the petitioner, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
5-11-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

5-11-2018

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate *Vice Csl.* for respondent

It is 10.05 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

CASE CALLED AGAIN

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate *Vice Csl.* for respondent

It is 12.15 P.M. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
Presiding Judge,
Labour Court, Shimla

CASE CALLED AFTER LUNCH

Present: None for the petitioner
Shri Kuldeep Thakur, Advocate Vice Csl. for respondent

It is 3.50 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date Shri Deepak Thakur, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed two opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether termination of the services Shri Bhag Singh s/o Shri Chet Ram Pal, r/o Sunny Niwas, Dev Nagar, Shimla by the Principal, Convent of Jesus and Merry, Navbahar, Shimla-2, H.P. w.e.f. 31-12-2016, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, back wages and compensation the aggrieved workman is entitled to from the above employer/management?"

From the aforesaid reference, it is clear that the petitioner has alleged his termination w.e.f. 31-12-2016 to be illegal and unjustified but today he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally w.e.f. 31-12-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, in the absence of the petitioner, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

5-11-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

**ब अदालत उप-मण्डलाधिकारी (ना0), घुमारवीं, उप-मण्डल घुमारवीं, जिला बिलासपुर
(हि0प्र0)**

संख्या: जीएमआर-पेशी/2019-4808

दिनांक : 27-06-2019

ओम प्रकाश शर्मा पुत्र श्री दुर्गा दास, गांव गतोल, डाकघर दाबला, तहसील घुमारवीं, जिला बिलासपुर,
हि0प्र0 प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

आम जनता को सूचित किया जाता है कि आवेदनकर्ता श्री ओम प्रकाश आयु 56 वर्ष पुत्र श्री दुर्गा दास, गांव गतोल, डाकघर दाबला, तहसील घुमारवीं, जिला बिलासपुर, हि0प्र0 ने इस न्यायालय में आवेदन किया है कि वह अपना नाम ओम प्रकाश के स्थान पर ओम प्रकाश शर्मा करवाना चाहते हैं। अतः उक्त सन्दर्भ में यदि कोई एतराज हो तो दिनांक 29-07-2019 या इससे पूर्व प्रातः 10.00 बजे तक इस न्यायालय में आपत्ति दर्ज करवा सकते हैं। उक्त दिनांक के बाद कोई भी आपत्ति मान्य नहीं होगी।

आज दिनांक 27-06-2019 को मेरे हस्ताक्षर एवं मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
उप-मण्डलाधिकारी (ना0),
घुमारवीं, जिला बिलासपुर (हि0प्र0)।

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Hamirpur,
District Hamirpur (H.P.)**

In the matter of :

1. Sanjeev Kumar s/o Shri Hari Singh, r/o Village Nanot, Post Office Uhal, Tehsil Bamson, District Hamirpur (H.P.) &

2. Smt. Archna Walia d/o Karm Chand, r/o Village Badi Khas, Post Office Kamlehar, Tehsil Palampur, District Kangra (H.P.) *Applicants.*

Versus

General Public

Subject.— Notice for Registration of Marriage.

Sh. Sanjeev Kumar & Archna Walia have filed an application U/S 16 of Special Marriage Act, 1954 alongwith affidavits in the court of the undersigned in which they have stated that they have solemnized their marriage on 19-06-2011 as per Hindu rites and customs.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objections personally or in writing before this

court on or before 27-07-2019. The objections received after 27-07-2019 will not be entertained and marriage will be registered accordingly.

Issued today on 22-06-2019 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H.P.).*

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Hamirpur,
District Hamirpur (H.P.)**

In the matter of :

1. Vinod Kumar s/o Shri Raghu Nath, r/o Village Anu Kalan, Post Office, Tehsil and District Hamirpur (H.P.) &

2. Sunita d/o Sh. Nikka Ram, r/o Village & Post Office Bir-Bagehra, Tehsil Sujanpur, District Hamirpur (H.P.) *Applicants.*

Versus

General Public

Subject.—Notice for Registration of Marriage.

Sh. Vinod Kumar & Sunita have filed an application for registration of marriage U/S 16 of Special Marriage Act, 1954 alongwith affidavits in the court of the undersigned in which they have stated that they have solemnized their marriage on 24-02-2019 at Murli Manohar Mandir, Sujanpur, District Hamirpur, H. P. as per Hindu rites and customs.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objections personally or in writing before this court on or before 30-07-2019. The objections received after 30-07-2019 will not be entertained and marriage will be registered accordingly.

Issued today on 24-06-2019 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H.P.).*

**ब अदालत मनोहर लाल शर्मा, नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील सन्धोल, जिला मण्डी (हि० प्र०)**

मिसल नम्बर : 04

तारीख मजरूआ : 22-06-2019

तारीख पेशी : 23-07-2019

श्री सोनू कुमार पुत्र स्व० श्री मोहर सिंह, निवासी गांव बलेहड़, महाल फनैहल, डाकघर कुज्जाबल्ह, तहसील सन्धोल, जिला मण्डी (हि० प्र०) *प्रार्थी।*

बनाम

अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आवेदन-पत्र।

श्री सोनू कुमार पुत्र स्व० श्री मोहर सिंह, निवासी गांव बलेहड़, महाल फनैहल, डाकघर कुज्जाबल्ह, तहसील सन्धोल, जिला मण्डी (हि० प्र०) द्वारा समस्त औपचारिकताओं सहित इस न्यायालय में प्रस्तुत आवेदन-पत्र में उल्लेख किया है कि उसके पिता का वास्तविक नाम मोहर सिंह है जबकि राजस्व अभिलेख मुहाल फनैहल में उसके पिता का नाम गुरिया दर्ज है जो कि गलत है। इसलिए प्रार्थी ने निवेदन किया है कि राजस्व अभिलेख मुहाल फनैहल में दुरुस्ती की जाकर उसके पिता का नाम गुरिया उर्फ मोहर सिंह दर्ज किया जाए।

अतः इससे पूर्व कि मामला में अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आगामी आवश्यक कार्रवाई अमल में लाई जाए, इस नोटिस द्वारा जन-साधारण को सूचित किया जाता है कि यदि किसी को उपरोक्त मामला में कोई उजर/एतराज हो तो वह इस न्यायालय में दिनांक 23-07-2019 को प्रातः 10.00 बजे असातन या वकालतन हाजिर आकर अपना उजर/एतराज पेश कर सकता है। अन्यथा गैर-हाजरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी एवं प्रार्थी के आवेदन-पत्र का नियमानुसार निपटारा कर दिया जाएगा।

आज दिनांक 22 जून, 2019 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मनोहर लाल शर्मा,
नायब तहसीलदार एवं सहायक समाहर्ता, द्वितीय श्रेणी,
सन्धोल, जिला मण्डी, हि० प्र०।