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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 03 जुलाई, 2026 / 12 आषाढ़, 1948

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171 002, the 19th June, 2026

No: LEP-E/1/2024.—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 Judge, Labour Court-cum-Industrial**

Tribunal, Shimla (H.P.) on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* “e-Gazette”:—

Sl. No	Case No	Petitioner	Respondent	Section	Date of Award/Orders
1.	Ref.27/2024	Hem Raj	The XEN, Jal Shakti Vibhag.	10	05-05-2026
2.	Ref.44/2024	Ghanshyam	The XEN, Jal Shakti Vibhag.	10	05-05-2026
3.	Ap.119/2023	Tanzin Chhukit	The XEN, HPPWD, Kaza	2A	30-05-2026
4.	Ref.86/2024	Dorje Chhering	The XEN, HPPWD, Kaza	10	30-05-2026
5.	Ref.87/2024	Sonam Dorje	The XEN, HPPWD, Kaza	10	30-05-2026
6.	Ref.88/2024	Chhering Namgial	The XEN, HPPWD, Kaza	10	30-05-2026
7.	Ref.89/2024	Chhering Norgay	The XEN, HPPWD, Kaza	10	30-05-2026
8.	Ref.90/2024	Lobzang	The XEN, HPPWD, Kaza	10	30-05-2026
9.	Ref.91/2024	Tenzin Dolma	The XEN, HPPWD, Kaza	10	30-05-2026
10.	Ref.92/2024	Sonam Dolma	The XEN, HPPWD, Kaza	10	30-05-2026
11.	Ref.93/2024	Dawa Butith	The XEN, HPPWD, Kaza	10	30-05-2026
12.	Ref.94/2024	Dolma Chhering	The XEN, HPPWD, Kaza	10	30-05-2026
13.	Ref.95/2024	Kunga Yangdon	The XEN, HPPWD, Kaza	10	30-05-2026
14.	Ref.96/2024	Tashi Chhodon	The XEN, HPPWD, Kaza	10	30-05-2026
15.	Ref.97/2024	Tenzin Dolma	The XEN, HPPWD, Kaza	10	30-05-2026
16.	Ref.98/2024	Gela Giacho	The XEN, HPPWD, Kaza	10	30-05-2026
17.	Ref.99/2024	Kalzan Chhodon	The XEN, HPPWD, Kaza	10	30-05-2026
18.	Ref.100/2024	Chhering Dorje	The XEN, HPPWD, Kaza	10	30-05-2026
19.	Ref.101/2024	Gatuk Namgial	The XEN, HPPWD, Kaza	10	30-05-2026
20.	Ref.102/2024	Zangmo Kalzan	The XEN, HPPWD, Kaza	10	30-05-2026
21.	Ref.103/2024	Tanzin Hosser	The XEN, HPPWD, Kaza	10	30-05-2026
22.	Ref.104/2024	Prem Lata	The XEN, HPPWD, Kaza	10	30-05-2026

By order,

Sd/-
(PRIYANKA BASU INGTY),
Secretary (Lab. Emp. & O.P.).

BEFORE PREETI THAKUR, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference No. : 27 of 2024
Instituted on : 02-05-2024
Decided on : 05-05-2026

Hem Raj, s/o Sh. Charan Dass, r/o Village Jajehar, P.O. Gumma, Tehsil Dharni, District Shimla, H.P.
Petitioner.

VERSUS

1. The Executive Engineer, Jal Shakti Vibhag, Divisional Sunni, Tehsil Sunni, District Shimla, H.P.

2. The Sub-Divisional Officer, Sub Division-Gumma, Tehsil Sunni, District Shimla, H.P.

3. Sh. Bhupesh Janartha, Managing Director, M/S Shimla Cleanways Company, Sahibu Niwas, Sector-2, New Shimla, H.P. **Respondents.**

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.
 For the Respondents no. 1 & 2 : Sh. Manoj Sharma, ADA
 For the Respondent no. 3 : Sh. Vineet Guleria, Adv.

AWARD

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

“Whether the termination of the services of Sh. Hem Raj, s/o Sh. Charan Dass, r/o Village Jajehar, P.O. Gumma, Tehsil Dhami, District Shimla, H.P. by (i) The Executive Engineer, Jal Shakti Vibhag, Divisional Sunni, Tehsil Sunni, District Shimla, H.P. (ii) The Sub-Divisional Officer, Sub Division-Gumma, Tehsil Sunni, District Shimla, H.P. (iii) Sh. Bhupesh Janartha, Managing Director, M/S Shimla Cleanways Company, Sahibu Niwas, Sector-2, New Shimla, H.P. w.e.f. 06.03.2023 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workwoman is entitled to from the above managements?”

2. The case was listed for appearance of the parties for today but, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Clearly, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the parties nor any counsel had put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 06.03.2023 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**BEFORE PREETI THAKUR, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA**

Reference No. : 44 of 2024
Instituted on : 31-05-2024
Decided on : 05-05-2026

Ghanshyam, s/o Sh. Bhikhu Ram, r/o Village Jaishi, P.O. Bharara, Tehsil Sunni, District Shimla, H.P. **..Petitioner.**

VERSUS

4. The Executive Engineer, Jal Shakti Vibhag, Divisional Sunni, Tehsil Sunni, District Shimla, H.P.

5. The Sub-Divisional Officer, Sub Division-Gumma, Tehsil Sunni, District Shimla, H.P.

6. Sh. Bhupesh Janartha, Managing Director, M/S Shimla Cleanways Company, Sahibu Niwas, Sector-2, New Shimla, H.P. **..Respondents.**

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo
For the Respondents no. 1 & 2 : Sh. Manoj Sharma, ADA
For the Respondent no. 3 : Sh. Vineet Guleria, Adv.

AWARD

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

“Whether the termination of the services of Sh. Ghanshyam, S/o Sh. Bhikhu Ram, R/o Village Jaishi, P.O. Bharara, Tehsil Sunni, District Shimla, H.P. by (i) The Executive Engineer, Jal Shakti Vibhag, Divisional Sunni, Tehsil Sunni, District Shimla, H.P. (ii) The Sub-Divisional Officer, Sub Division-Gumma, Tehsil Sunni, District Shimla, H.P. (iii) Sh. Bhupesh Janartha, Managing Director, M/S Shimla Cleanways Company, Sahibu Niwas, Sector-2, New Shimla, H.P. w.e.f. 06.03.2023 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief of reinstatement in services, past service benefits, leave encashment, overtime benefits and compensation etc. the above aggrieved workwoman is entitled to from the above managements?”

2. The case was listed for appearance of the parties for today but, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Clearly, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) ‘award’ means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

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6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:-

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the parties nor any counsel had put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 06.03.2023 was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition it is reiterated that the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

**Application No. : 119 of 2023
Instituted on : 03-08-2023
Decided on : 30-05-2026**

**Tanzin Chhukit, d/o Sh. Sonam Angdui , r/o Village Langcha, P.O. Hikkam, Tehsil Spiti,
District Lahaul & Spiti, HP. ..Petitioner.**

VERSUS

- 1. The Secretary, HP PWD, to the Government of Himachal Pradesh Shimla-2.**
- 2. The Executive Engineer, HPPWD (B&R) Division Spiti, District Lahaul & Spiti,
H.P. ..Respondents.**

Application under Section 2-A of the Industrial Disputes Act, 1947

**For the petitioner : Shri Prateek Kumar, Advocate
For the respondents : Shri Devender Chandel, Dy. DA.**

AWARD

1. The present claim has been filed by the petitioner directly before this Tribunal under the provisions of Section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and worked continuously with the department. The petitioner had completed more than 180 days as per the requirement of section 25-F of the Act. The services of the petitioner were continuous for the purpose of Section 25-B of Act as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many

junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 4 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR

4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR

5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages

Issue No.3 : No

Issue No.4 : No

Relief : Application allowed as per operative part of award

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 27.05.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register. He has further admitted that as per diary number put on the original record of Ex. PW-2/A the demand notice has been shown to be received by the then Labour Officer on 14.06.2023.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and she has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 213 days in the year 2021 and 231 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has

placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022.**

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:—

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, she will be deemed to be in continuous service. The burden of proof is on the petitioner to show that she has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his/her alleged retrenchment. The law on this issue is well settled. In **R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 30.11.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2021 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 213 days in the year 2021 and 231 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till November, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he/ she has left/ abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of May, 2021 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during the month of November, 2021 and 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month November, 2021 and 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus, it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till November, 2022 and thereafter her services were finally terminated. As

per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the services of petitioner were availed during the month of November, 2021 and 2022. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating her services w.e.f. 01.12.2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a **Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He

will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any."

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination *i.e. w.e.f. 01.12.2022* till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO.3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO.4

38. In so far as this issue is concerned, the record reveals that the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act after submitting her demand notice

Ex. PW-1/B before the Labour Officer, Kinnaur and thereafter the present claim has been filed by the petitioner directly before this Court under the provisions of Section 2-A of the Act. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The claim of the petitioner is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference No. : 86 of 2024
Instituted on : 20-09-2024
Decided on : 30-05-2026

Dorje Chhering, s/o Sh. Chhering Dorje, r/o VPO Key Gompa, Tehsil Kaza, District Lahaul & Spiti, H.P. **Petitioner.**

VERSUS

The Executive Engineer, H.P. PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. **Respondent.**

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Shri Dorje

Chhering, S/O Sh. Chhering Dorje, R/O VPO Key Gompa, Tehsil Kaza, District Lahaul & Spiti, HP during Nov, 2021 to Dec, 2022 and finally terminating his services during Dec, 2022, is legal and justified? If not what relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of "last come first go". Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondent in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages.

Issue No.3 :No

Issue No.4 : No

Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons

mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and he has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 306 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work

requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gaiinda Lal Jadav SLP (C) No. 15480 of 2022.**

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till December, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:—

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of

proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Mandays chart took place on 01.01.2023). The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2021 till October, 2021 and whereafter he was not allowed to work. Thereafter the services of petitioner were again reengaged in the month of March, 2022 till December, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. This witness has even volunteered that the petitioner has worked for 183 days in the year 2021 and 306 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as ***Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875*** that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as ***State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286***, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for

his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even prior to May month of the year and beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of May, 2021 till December, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May and after October month then for what purpose the services of petitioner were availed during the months of March, April, November and December, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month of March and April, 2022 and November-December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his

services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till October, 2021 where after he was again reengaged in the month of March, 2022 till December, 2022 and thereafter his services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service and thereafter reengaged him in the month of March, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from March till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services during December, 2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar)**.

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F

and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination i.e. January, 2023 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Reference No. : 87 of 2024
Instituted on : 25-09-2024
Decided on : 30-05-2026**

Sonam Dorje, s/o Sh. Padma Dorje, r/o VPO Demul, Tehsil Spiti, District Lahaul & Spiti, H.P. Petitioner.

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Shri Sonam Dorje, S/O Shri Padma Dorje, R/O VPO Demul, Tehsil Spiti, District Lahaul & Spiti, HP during May, 2021 to December, 2022 and finally terminating his services during December, 2022, is legal and justified? If not what relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding

calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondent in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- | | |
|-------------------|--|
| Issue No.1 | : Yes |
| Issue No.2 | : Entitled for reinstatement with seniority and continuity along-with full back-wages |
| Issue No.3 | : No |
| Issue No.4 | : No |
| Relief | : Reference answered in affirmative as per operative part of award. |

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 27.05.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register. He further admitted that as per diary number put on the original record of Ex. PW-2/A the demand notice has been shown to be received by the then Labour Officer on 14.06.2023.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and he has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 243 days in the year 2021 and 305 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He

further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gaiinda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till December, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:—

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*

(a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*

(i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Mandays chart took place on 01.01.2023). The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2021 till January, 2022 thereby completing more than 180 working days in each calendar year and thereafter he was not allowed to work in the months of Feb., 2022 & March, 2022 and then he was again reengaged in the month of April, 2022 and worked as such till December, 2022. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022 except for the months of Feb., & March, 2022. This witness has even volunteered that the petitioner has worked for 243 days in the year 2021 and 305 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the

other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that 'animus' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even prior to May month of the year and beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of May, 2021 till December, 2022, except the months of Feb., & March 2022 which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May and after October month then for what purpose the services of petitioner were availed during the months of January, April, November and December. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of January and November-December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appear to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till January, 2022 where after he was again reengaged in the month of April, 2022 till December, 2022 and thereafter his services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service of petitioner and thereafter reengaged him in the month of March, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from March till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services during December, 2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khanna)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar)**.

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that

even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a **Divisional Bench of Hon’ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon’ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324**, it has been held by the Hon’ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee’s

entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination i.e. January, 2023 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO.3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO.4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

**Reference No. : 88 of 2024
Instituted on : 25-09-2024
Decided on : 30-05-2026**

Chhering Namgial s/o Shri Tenzin Dorje r/o Village Key, PO Key Gompa, Tehsil Kaza, District Lahaul & Spiti, H.P. Petitioner.

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

**For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA**

AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Shri Chhering Namgial s/o Shri Tenzin Dorje r/o Village Key, PO Key Gompa, Tehsil Kaza, District Lahaul & Spiti, HP during May, 2021 to December, 2022 and finally terminating his services during December, 2022 is legal and justified? If not what relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year

2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondent in the year 2023 without complying with the provisions of the Act as alleged? OPP
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- Issue No. 1 : Yes**
Issue No. 1 : Yes
Issue No. 2 : Entitled for reinstatement with seniority and continuity along-with full back-wages
Issue No. 3 : No
Issue No. 4 : No
Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2.

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and he has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 306 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after

December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gaiinda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till December, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of the respondent that the petitioner has himself abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression “continuous service” has been defined in Section 25-B of the Act, which in its material part reads as thus:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Mandays chart took place on 01.01.2023. The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2021 till December, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. This witness has even volunteered that the petitioner has worked for 183 days in the year 2021 and 306 days in the year 2022. Thus, there is abundant evidence led

by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/ employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even prior to May month of the year and beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of March, 2022 till December, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged

beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May and after October month then for what purpose the services of petitioner were availed during the Months of March, April, November and December, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month of March and April, 2022 and November-December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till October, 2021 where after he was again reengaged in the month of March, 2022 till December, 2022 and thereafter his services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service of five months and thereafter reengaged him in the month of March, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from March till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services during December, 2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that

there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned

strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination i.e. January, 2023 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall

carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
*Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).*

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference No. : 89 of 2024
Instituted on : 25-09-2024
Decided on : 30-05-2026

Chhering Norgay s/o Shri Lobzang Tandup, r/o V PO Kaza, Tehsil Spiti, District Lahaul & Spiti, H.P. ...Petitioner.

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. ... Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Shri Chhering Norgay s/o Shri Lobzang Tandup, r/o VPO Kaza, Tehsil Spiti, District Lahaul & Spiti, HP during May, 2021 to November, 2022 and finally terminating his services during November, 2022, is legal and justified? If not what relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional

breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of "last come first go". Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondent in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR

5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and he has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 181 days in the year 2022. He has further admitted that the petitioner had completed more than 180 days as per mandays chart. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the

Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression “continuous service” has been defined in Section 25-B of the Act, which in its material part reads as thus:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously worked till November, 2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2021 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that

PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till November, 2022. Thus, there is abundant evidence led by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2021 till November, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of May, 2021 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of

labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during November, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month of November.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appear to have been substantiated on record. There is no evidence led by the petitioner to establish that new/fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till November, 2022 and thereafter his services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service of petitioner. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was allowed to work in the month of November. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services during November, 2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that

there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar)**.

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a **Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of

reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination i.e. January, 2023 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. *Vide* order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall

carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
*Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).*

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Reference No. : 90 of 2024
Instituted on : 25-09-2024
Decided on : 30-05-2026

Lobzang S/o Shri Thuktan, r/o VPO Demul, Tehsil Spiti, District Lahaul & Spiti, HP.

VERSUS

The Executive Engineer, H.P. PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P.
Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA.

AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Shri Lobzang s/o Shri Thuktan, r/o VPO Demul, Tehsil Spiti, District Lahaul & Spiti, HP during May, 2021 to December, 2022 and finally terminating his services during December, 2022, is legal and justified? If not what relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further

averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of "last come first go". Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondent in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR

4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR

5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2.

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 27.05.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned

record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and he has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 243 days in the year 2021 and 305 days in the year 2022. He has further admitted that the petitioner had completed more than 180 days as per mandays chart. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gaiinda Lal Jadav SLP (C) No. 15480 of 2022.**

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till December, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression “continuous service” has been defined in Section 25-B of the Act, which in its material part reads as thus:—

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Mandays chart took place on 01.01.2023. The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously

worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2021 till December, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. Thus, there is abundant evidence led by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked with the respondent from the month of May, 2021 till

December, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during the months of January, April, November and December. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of January, April, November and December.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till January, 2022 where after he was again reengaged in the month of April, 2022 till December, 2022 and thereafter his services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service of petitioner and thereafter reengaged him in the month of April, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work

in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from January, 2022 till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B&R) Division Kaza to give break in service and thereafter finally terminating his services w.e.f. 01.01.2023 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana) and Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the

special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any."

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination i.e. January, 2023 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. *Vide* order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of

the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
*Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).*

IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference No. : 91 of 2024
Instituted on : 25-09-2024
Decided on : 30-05-2026

Tenzin Dolma, w/o Sh. Champa Chhering, r/o Village Key, P.O. Key Gompa, Tehsil Spiti, District Lahul & Spiti, H.P. Petitioner.

VERSUS

The Executive Engineer, H.P. PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Tenzin Dolma, w/o Sh. Champa Chhering, r/o Village Key, P.O. Key Gompa, Tehsil Spiti, District Lahaul & Spiti, H.P., during May, 2021 to December, 2022 and finally terminating her services during December, 2022, is legal and justified? If

not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had continuously worked with the department as such her services were continuous for the purpose of Section 25-B of Industrial Disputes Act (hereinafter to be referred as the Act) as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.
6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.
7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.
8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages.

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received

by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and she has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 306 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement

with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such till December, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.01.2023). The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2021 till December, 2022 thereby completing more than 180 working days in twelve calendar months preceding her termination. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. This witness has even volunteered that the petitioner has worked for 183 days in the year 2021 and 306 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked continuously with the respondent from the month of May, 2021 till December, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May and after October month then for what purpose the services of petitioner were availed during the months of March, April, November & December. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of March & December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 to October, 2021 where after she was again reengaged in the month of March,

2022 till December, 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service and thereafter reengaged her in the month of March, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B&R) Division Kaza to give break in service and thereafter finally terminating his services *w.e.f.* 01.01.2023 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he

would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any."

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324**, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination w.e.f. 01.01.2023 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. *Vide* order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Reference No. : 92 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026**

**Sonam Dolma, w/o Sh. Takpa Samtan, r/o Village Tashigang, P.O. Kibber, Tehsil
Spiti, District Lahaul & Spiti, HP. Petitioner.**

VERSUS

**The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul
& Spiti, H.P. Respondent.**

Reference under Section 10 of the Industrial Disputes Act, 1947

**For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA**

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Sona, Dolma, w/o Sh. Takpa Samtan, r/o Village Tashigang, P.O. Kibber, Tehsil Spiti, District Lahaul & Spiti, H.P., during May, 2022 to November, 2022 and finally terminating her services during November, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2022. The petitioner had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period

during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- Issue No.1 : Yes**
Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages.
Issue No.3 : No
Issue No.4 : No
Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2.

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2022 and she has worked continuously with the department till November, 2022. He has admitted that the petitioner had completed more than 180 days as per mandays chart. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2022 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/ fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also

retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2022 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, she will be deemed to be in continuous service. The burden of proof is on the petitioner to show that she has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his/her alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 30.11.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2022 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2022 and thereafter continuously worked with the department till November, 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2022 till November, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon’ble High Court in case titled as ***Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875*** that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as ***State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286***, it has been held by our own Hon’ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of

arguments, if it is accepted that the petitioner voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of May, 2022 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/ office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the year 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during the month of November, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month May, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to

discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was engaged in the month of May, 2022 till November, 2022 and thereafter her services were finally terminated. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the services of petitioner were availed during the month of November, 2022. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating her services w.e.f. 01.12.2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khanna) and Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice

Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination i.e. w.e.f. 01.12.2022 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-

B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference No. : 93 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026

Dawa Butith, w/o Sh. Gela Phunchok, r/o Village Key, P.O. Key Gompa, Tehsil Spiti,
District Lahul & Spiti, HP. Petitioner.

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul
& Spiti, H.P. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Dawa Butith, w/o Sh. Gela Phunchok, r/o Village Key, P.O. Key Gompa, Tehsil Spiti, District Lahaul & Spiti, H.P., during May, 2021 to December, 2022 and finally terminating her services during December, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had continuously worked with the department as such her services were continuous for the purpose of Section 25-B of Industrial Disputes Act (hereinafter to be referred as the Act) as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The

objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- | | |
|-------------------|---|
| Issue No.1 | : Yes |
| Issue No.2 | : Entitled for reinstatement with seniority and continuity along-with full back-wages. |
| Issue No.3 | : No |
| Issue No.4 | : No |
| Relief | : Reference answered in affirmative as per operative part of award. |

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and she has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 306 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the

requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such till December, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*

- (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
- (ii) *two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.01.2023). The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2021 till December, 2022 thereby completing more than 180 working days in twelve calendar months preceding her termination. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. This witness has even volunteered that the petitioner has worked for 183 days in the year 2021 and 306 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon’ble High Court in case titled as ***Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875*** that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as ***State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286***, it has been held by our own Hon’ble High Court that abandonment is not to be lightly presumed, but

it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, it is accepted that the petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked continuously with the respondent from the month of May, 2021 till December, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May and after October month then for what purpose the services of petitioner were availed during the months of March, April, November and December. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of March, April, November & December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is

contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 to October, 2021 where after she was again reengaged in the month of March, 2022 till December, 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service and thereafter reengaged her in the month of March, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services w.e.f. 01.01.2023 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khanna)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement.

This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a **Divisional Bench of Hon’ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon’ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324**, it has been held by the Hon’ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee’s entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor

any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination w.e.f. 01.01.2023 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference No. : 94 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026

Dolma Chhering, w/o Sh. Tandup Namgial, r/o Village Key, P.O. Key Gompa, Tehsil Spiti, District Lahul & Spiti, HP.
Petitioner.

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P.
Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Dolma Chhering, w/o Sh. Tandup Namgial, r/o Village Key, P.O. Key Gompa, Tehsil Spiti, District Lahaul & Spiti, H.P., during May, 2021 to December, 2022 and finally terminating her services during December, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had continuously worked with the department as such her services were continuous for the purpose of Section 25-B of Industrial Disputes Act (hereinafter to be referred as the Act) as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- Issue No.1 : Yes**
Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages.
Issue No.3 : No
Issue No.4 : No
Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS**ISSUES NO 1 & 2**

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and she has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 306 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily

waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such till December, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause*

(1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case....”

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.01.2023. The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2021 till December, 2022 thereby completing more than 180 working days in twelve calendar months preceding her termination. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. This witness has even volunteered that the petitioner has worked for 183 days in the year 2021 and 306 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner.

It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that 'animus' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked continuously with the respondent from the month of May, 2021 till December, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May and after October month then for what purpose the services of petitioner were availed during the months of March, April, November and December, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of March & December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged

continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appear to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 to October, 2021 where after she was again reengaged in the month of March, 2022 till December, 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service and thereafter reengaged her in the month of March, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services w.e.f. 01.01.2023 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khanna) and Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled.

Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a **Divisional Bench of Hon’ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon’ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324**, it has been held by the Hon’ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee’s entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was

gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination w.e.f. 01.01.2023 till her reinstatement.

36. In view of the above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Reference No. : 95 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026**

Kunga Yangdon, d/o Sh. Angchuk Takpa, r/o Village Langcha, P.O. Hikkam, Tehsil Spiti, District Lahaul & Spiti, HP. Petitioner.

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

**For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA**

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Kunga Yangdon, d/o Sh. Angchuk Takpa, r/o Village Langcha, P.O. Hikkam, Tehsil Spiti, District Lahaul & Spiti, H.P., during June, 2020 to November, 2022 and finally terminating her services during November, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2020 and had continuously worked with the department as such her services were continuous for the purpose of Section 25-B of Industrial Disputes Act (hereinafter to be referred as the Act) as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner

without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 4 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the month of April, 2023, without complying with the provisions of the Act, as alleged?

OPP

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

OPP

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

OPR

4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged?

OPR

5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- Issue No.1 : Yes**
Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages.
Issue No.3 : No
Issue No.4 : No
Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 27.05.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register. He further admitted that as per diary number put on the original record of Ex. PW-2/A the demand notice has been shown to be received by the then Labour Officer on 06.06.2023.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of June, 2020 and she has worked continuously with the department till November, 2022. He

has volunteered that the petitioner had worked for 182 days in the year 2020, 213 days in the year 2021 and 213 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of June, 2020 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of June, 2020 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such till November, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of respondent that the petitioner has

abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression “continuous service” has been defined in Section 25-B of the Act, which in its material part reads as thus :

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 30.11.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from June, 2020 till November, 2022 thereby completing more than 180 working days in twelve calendar months preceding her termination. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of June, 2020 and thereafter continuously

worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 182 days in the year 2020, 213 days in the year 2021 and 213 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of June, 2020 till November, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that 'animus' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked continuously with the respondent from the month of June, 2020 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office

order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2020 to 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purposes the services of petitioner were availed during the month of November, 2020, 2021 and 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of November every year.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2020 and worked as such till November 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in her service. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged till November, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services w.e.f. 01.12.2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special

impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination w.e.f. 01.12.2022 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in

service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
*Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).*

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

**Reference No. : 96 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026**

Tashi Chhodon, w/o Sh. Chhering Tenzin, r/o Village Chicham, P.O. Kibber, Tehsil Spiti, District Lahaul & Spiti, H.P. Petitioner.

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

**For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA**

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Tashi Chhodon, w/o Sh. Chhering Tenzin, r/o Village Chicham, P.O. Kibber, Tehsil Spiti, District Lahaul & Spiti, H.P., during May, 2021 to November, 2022 and finally terminating her services during November, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the

petitioner were continuous for the purpose of Section 25-B of Act as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of "last come first go". Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP

3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.
6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.
7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.
8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages.

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2.

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wagger. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that used to be no work with the department during winter season as such they were not engaged at that time as labourers. She has denied that she was not willing to work during winter season. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned

record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HP PWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and he has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 194 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression “continuous service” has been defined in Section 25-B of the Act, which in its material part reads as thus:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, she will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.01.2023. The petitioner has categorically deposed in her evidence that

from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the Mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department continuously from May, 2021 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 183 days in the year 2021 and 194 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till November, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department.

The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of May, 2021 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during November, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month of November, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same Thus it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till October, 2021 where after she was again reengaged in the month of May, 2022 till November, 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service of seven

months and thereafter reengaged her in the month of May, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from May till November, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating her services during November, 2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana) and Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He

will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any."

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination i.e. December, 2022 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court

has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

**Reference No. : 97 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026**

**Tenzin Dolma, w/o Sh. Lobzang Chhople, r/o Village Key, P.O. Key Gompa, Tehsil
Spiti, District Lahul & Spiti, HP. Petitioner.**

VERSUS

**The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul
& Spiti, H.P. Respondent.**

Reference under Section 10 of the Industrial Disputes Act, 1947

**For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA**

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Tenzin

Dolma, w/o Sh. Lobzang Chhople, r/o Village Key, P.O. Key Gompa, Tehsil Spiti, District Lahaul & Spiti, H.P., during May, 2021 to December, 2022 and finally terminating her services during December, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had continuously worked with the department as such her services were continuous for the purpose of Section 25-B of Industrial Disputes Act (hereinafter to be referred as the Act) as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of "last come first go". Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- Issue No.1 : Yes**
Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages.
Issue No.3 : No
Issue No.4 : No
Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2.

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and she has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 306 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended

that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such till December, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the

preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.01.2023. The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2021 till December, 2022 thereby completing more than 180 working days in twelve calendar months preceding her termination. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. This witness has even volunteered that the petitioner has worked for 183 days in the year 2021 and 306 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as ***Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875*** that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as ***State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286***, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding

alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked continuously with the respondent from the month of May, 2021 till December, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May & after October month then for what purpose the services of petitioner were availed during the months of March, April, November and December. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of March & December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice

and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 to October, 2021 where after she was again reengaged in the month of March, 2022 till December, 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service and thereafter reengaged her in the month of March, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services w.e.f. 01.01.2023 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar)**.

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination w.e.f. 01.01.2023 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
*Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).*

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Reference No. : 98 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026**

**Gela Giacho s/o Shri Chhering Tandup, r/o Village, Chicham, PO Kibbar, Tehsil Spiti,
District Lahaul & Spiti, HP. Petitioner.**

VERSUS

**The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul
& Spiti, H.P. Respondent.**

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA
AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti H.P. to give break in service to Shri Gela Giacho s/o Shri Chhering Tandup, r/o Village, Chicham, PO Kibbar, Tehsil Spiti, District Lahaul & Spiti, HP during May, 2021 to November, 2022 and finally terminating his services during November, 2022, is legal and justified? If not what relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The

objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondent in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- | | |
|-------------------|--|
| Issue No.1 | : Yes |
| Issue No.2 | : Entitled for reinstatement with seniority and continuity along-with full back-wages |
| Issue No.3 | : No |
| Issue No.4 | : No |
| Relief | : Reference answered in affirmative as per operative part of award. |

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and he has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 198 days in the year 2022. He has further admitted that the petitioner had completed more than 180 days as per mandays chart. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment

of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned with work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*

(a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*

(i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously worked till 30.11.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2021 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till November, 2022.. Thus, there is abundant evidence led by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2021 till November, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon’ble High Court in case titled as ***Narain Singh vs. The State of Himachal Pradesh & Ors.,***

2016 (3) Him L.R. 1875 that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as **State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286**, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of May, 2021 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during November, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month of November, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against

the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appear to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till October, 2021 where after he was again reengaged in the month of May, 2022 till November, 2022 and thereafter his services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service of petitioner and thereafter reengaged him in the month of May, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from May till November, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services during the month of November, 2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khanna)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows :—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled.

Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a **Divisional Bench of Hon’ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon’ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324**, it has been held by the Hon’ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee’s entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was

gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination i.e. January, 2023 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Reference No. : 99 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026**

**Kalzung Chhodon, w/o Sh. Tashi Namgial, r/o Village Key, P.O. Key Gompa, Tehsil
Spiti, District Lahul & Spiti, HP. Petitioner.**

VERSUS

**The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul
& Spiti, H.P. Respondent.**

Reference under Section 10 of the Industrial Disputes Act, 1947

**For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA**

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Kalzung Chhodon, w/o Sh. Tashi Namgial, r/o Village Key, P.O. Key Gompa, Tehsil Spiti, District Lahaul & Spiti, H.P., during May, 2021 to December, 2022 and finally terminating her services during December, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had continuously worked with the department as such her services were continuous for the purpose of Section 25-B of Industrial Disputes Act (hereinafter to be referred as the Act) as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and

setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1	: Yes
Issue No.2	: Entitled for reinstatement with seniority and continuity along-with full back-wages.
Issue No.3	: No
Issue No.4	: No
Relief	: Reference answered in affirmative as per operative part of award

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 06.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and she has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 183 days in the year 2021 and 306 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that

no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wage in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such till December, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that

period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*

(a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*

(i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.01.2023. The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2021 till December, 2022 thereby completing more than 180 working days in twelve calendar months preceding her termination. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. This witness has even volunteered that the petitioner has worked for 183 days in the year 2021 and 306 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as

this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked continuously with the respondent from the month of May, 2021 till December, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May and after October month then for what purpose the services of

petitioner were availed during the months of March, April, November & December, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of March & December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 to October, 2021 where after she was again reengaged in the month of March, 2022 till December, 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service and thereafter reengaged her in the month of March, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services w.e.f. 01.01.2023 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khanna)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows :—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a Divisional Bench of **Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

24. The petitioner as per her pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In **Deepali Gundu**

Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination w.e.f. 01.01.2023 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference No. : 100 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026

**Chhering Dorje, s/o Sh. Chhering Landup, r/o Village Langcha, P.O. Hikkam, Tehsil
Spiti, District Lahaul & Spiti, HP. Petitioner.**

VERSUS

**The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul
& Spiti, H.P. Respondent.**

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti H.P. to give break in service to Shri Chhering Dorje, s/o Sh. Chhering Landup, r/o Village Langcha, P.O. Hikkam, Tehsil Spiti, District Lahaul & Spiti, HP during May, 2020 to November, 2022 and finally terminating his services during November, 2022, is legal and justified? If not what relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2020 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan,

Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 4 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondent in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR

5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

- Issue No.1 : Yes**
Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages
- Issue No.3 : No**
Issue No.4 : No
Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2.

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 27.05.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register. He further admitted that as per diary number put on the original record of Ex. PW-2/A the demand notice has been shown to be received by the then Labour Officer on 14.06.2023.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2020 and he has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 212 days in the year 2020, 213 days in the year 2021 and 213 days in the year 2022. He has further admitted that the petitioner had completed more than 180 days as per mandays chart. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2020 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2020 which fact is also clear from the Mandays

chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression “continuous service” has been defined in Section 25-B of the Act, which in its material part reads as thus:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously worked till November, 2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be

said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2020 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2020 and thereafter continuously worked with the department till November, 2022. Thus, there is abundant evidence led by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2020 till November, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be

engaged by the department even beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked with the respondent from the month of May, 2020 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2020 to 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during November, 2020, 2021 and 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month of November.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appear to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2020 till November, 2022 and thereafter his services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service of petitioner. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every

year then why the petitioner was allowed to work in the month of November. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services during November, 2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows :—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination i.e. 01.12.2022 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
*Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).*

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference No. : 101 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026

Gatuk Namgial s/o Shri Gatuk Angrup, r/o Village, Langcha, PO Hikkam, Tehsil Spiti, District Lahaul & Spiti, HP. **Petitioner.**

VERSUS

The Executive Engineer, H.P. PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. **Respondent.**

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Shri Gatuk Namgial s/o Shri Gatuk Angrup, r/o Village, Langcha, PO Hikkam, Tehsil Spiti, District Lahaul & Spiti, HP during May, 2021 to December, 2022 and finally terminating his services during December, 2022, is legal and justified? If not what

relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of "last come first go". Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondent in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered in affirmative as per operative part of award

REASONS FOR FINDINGS

ISSUES NO 1 & 2.

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 27.05.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and he has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 213 days in the year 2021 and 334 days in the year 2022. He further admitted that the petitioner had completed more than 180 days in the year 2021 and 2022. He has denied that the services of petitioner were illegally and orally terminated after December, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of December, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022.**

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till December, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression “continuous service” has been defined in Section 25-B of the Act, which in its material part reads as thus:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Man-

days chart took place on 01.01.2023. The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously worked till 31.12.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2021 till December, 2022 thereby completing more than 180 working days in each calendar year. It is also not disputed that the petitioner was not allowed to work for one month and then he was again reengaged in the month of January, 2022 and worked as such till December, 2022. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till December, 2022. Thus, there is abundant evidence led by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2021 till December, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in December, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even prior to May month of the year and beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked with the respondent from the month of May, 2021 till December, 2022, except the month of December, 2021 which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department prior to May and after October month then for what purpose the services of petitioner were availed during the months of January to December, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of January to April and November-December, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appear to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 till November, 2021 where after he was again reengaged in the month of January, 2022 till December, 2022 and thereafter his services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service of petitioner and thereafter reengaged him in the month of January, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from January till December, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services w.e.f. 01.01.2023 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana) and Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows :—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166, a Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the

respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any."

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination i.e. January, 2023 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
*Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).*

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Reference No. : 102 of 2024
Instituted on : 17-10-2024
Decided on : 30-05-2026**

Zangmo Kalzang, d/o Sh. Namgial Tandup, r/o VPO Rangrik, Tehsil Kaza, District Lahul & Spiti, H.P. Petitioner.

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

**For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA**

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, H.P. PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Ms. Zangmo Kalzang, d/o Sh. Namgial Tandup, r/o VPO Rangrik, Tehsil Kaza, District Lahaul & Spiti, H.P., during May, 2021 to November, 2022 and finally terminating her services during November, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021. The petitioner was allowed to work for three months w.e.f. May, 2021 to July, 2021 and thereafter her services were orally terminated, but after some time the services of the petitioner were re-engaged by the department and she was allowed to work from May, 2022 till November, 2022. The petitioner had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in November, 2022 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy,

their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP

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

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

4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR

5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is

engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 14.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and she has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 59 days in the year 2021 and 214 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has

actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, she will be deemed to be in continuous service. The burden of proof is on the petitioner to show that she has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his/her alleged retrenchment. The law on this issue is well settled. In *R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106*, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 30.11.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2021 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 59 days in the year 2021 and 214 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till November, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for

her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked with the respondent from the month of May, 2021 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during November, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month November, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge he same. Thus it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her

services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 & September, 2021 where after she was again reengaged in the month of May, 2022 till November, 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service and thereafter reengaged her in the month of May, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from May till November, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating her services w.e.f. 01.12.2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar)**.

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a **Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination i.e. w.e.f. 01.12.2022 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find

nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference No. : 103 of 2024
Instituted on : 18-10-2024
Decided on : 30-05-2026

Tanzin Hosser, s/o Sh. Dorje Angchuk, r/o V.P.O. Kaza, Tehsil Kaza, District Lahaul & Spiti, HP.
Petitioner.

VERSUS

The Executive Engineer, H.P. PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P.
Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government :—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti H.P. to give break in service to Shri Tanzin Hosser, s/o Sh. Dorje Angchuk, r/o V.P.O. Kaza, Tehsil Kaza, District Lahaul & Spiti, HP during May, 2022 to November, 2022 and finally terminating his services during November, 2022, is legal and justified? If not what relief of service benefits, back-wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially he joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021 and had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as he remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in the year 2023 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that he had completed more than 180 days in twelve calendar months preceding his termination. The petitioner has prayed that the respondent department be directed to reinstate him by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of his initial engagement with full back wages. He has further prayed that he be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as he has completed more than 3 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on his own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period

during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that he had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1 : Yes

Issue No.2 : Entitled for reinstatement with seniority and continuity along-with full back-wages.

Issue No.3 : No

Issue No.4 : No

Relief : Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2.

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A, wherein he has reiterated and reaffirmed the contents of his claim petition. He also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, he has denied that he was engaged by the department to do a particular work. He has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. He has also denied that in the winter season he has not turned up for work out of his own will and wish. He has denied that he was engaged for a particular work which was temporary in nature. He has further denied that he had left the work on his own and his services were not terminated by the department. He has denied that he had not worked for 180 days in any calendar year. He has expressed his ignorance that the persons mentioned in para 6 of the claim were junior or senior to him. He has denied that his services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 14.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2022 and he has worked continuously with the department till November, 2022. He has admitted that the petitioner had completed more than 180 days as per mandays chart. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of his services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily waged beldar in the month of May, 2022 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that he could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their

services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to him was regularized by the department. It is contended that the petitioner himself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle him for his reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gaiinda Lal Jadav SLP (C) No. 15480 of 2022.**

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2022 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of his initial engagement till his termination. The petitioner has claimed that his services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to him nor he was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds his services had automatically came to an end. It is also the version of respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of his alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been held by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that he had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of his alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in his evidence that from the date of his engagement with the respondent as a daily waged beldar, he has continuously worked till November, 2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which he cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that he has worked with the department continuously from May, 2022 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2022 and thereafter continuously worked with the department till November, 2022. Thus, there is abundant evidence led by the petitioner on record to show that he has continuously worked with the department since his initial engagement in the month of May, 2022 till November, 2022 and has completed more than 180 days in each calendar year preceding his alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on his own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on his own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as **Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875** that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as **State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286**, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. For the sake of arguments, if it is accepted that the petitioner voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty.

Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that '*animus*' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department even beyond October month of the year. In the case in hand, it is no where disputed that the petitioner has worked with the respondent from the month of May, 2022 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the year 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during November, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month of November.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appears to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of his retrenchment, therefore his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating his services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2022 till November, 2022 and thereafter his services were finally terminated. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was allowed to work in the month of November. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating his services during November, 2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khana)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar)**.

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows :—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money 1976-3 SCR 160-166**, a **Divisional Bench of Hon'ble Apex Court** consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon'ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. He has claimed and deposed that from the date of his illegal termination, he is unemployed. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324*, it has been held by the Hon'ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of his service. Since, in the case in hand, the petitioner has shown that he was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of his illegal termination w.e.f. 01.12.2022 till his reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. Vide order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and he is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of his termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Shimla (H.P.).

**IN THE COURT OF PREETI THAKUR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

**Reference No. : 104 of 2024.
Instituted on : 18-10-2024.
Decided on : 30-05-2026.**

Prem Lata, w/o Sh. Tashi Tandup, r/o VPO Rangrik, Tehsil Kaza, District Lahul & Spiti, HP. **Petitioner.**

VERSUS

The Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P. **Respondent.**

Reference under Section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the respondent : Shri Devender Chandel, Dy. DA

AWARD

The following reference has been received for adjudication from the Appropriate Government:—

“Whether the action of the Executive Engineer, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti H.P. to give break in service to Smt. Prem Lata, w/o Sh. Tashi Tandup, r/o VPO Rangrik, Tehsil Kaza, District Lahaul & Spiti, H.P., during May, 2021 to November, 2022 and finally terminating her services during November, 2022, is legal and justified? If not, what relief of service benefits, back wages, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that initially she joined the services of the respondent department as daily waged labourer on muster roll basis during the year 2021. The petitioner was allowed to work for three months w.e.f. May, 2021 to July, 2021 and thereafter her services were orally terminated, but after some time the services of the petitioner were re-engaged by the department and she was allowed to work from May, 2022 till November, 2022. The petitioner had completed more than 180 days as per the requirement of section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act). The services of the petitioner were continuous for the purpose of Section 25-B of Act as she remained in the employment for more than 180 days (as required in Tribal Area) in a calendar year. It is further averred that to defeat the provisions of the Act, the respondent intentionally used to give fictional breaks in service without serving any notice which amounts to unfair labour practice. It is further averred that many junior persons namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom, Chhukit Dolma and Shakuntla Devi have been engaged continuously without being given any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act, as well as principles, of “last come first go”. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner. The above-named juniors are still working with the department and they have been granted seniority and continuity in service but the same benefits were not granted to the petitioner. The respondent all of sudden in November, 2022 had orally terminated the services of the petitioner without any reason and that too without following the provisions of the Act. The respondent department had stopped issuing muster roll in favour of the petitioner despite the fact that she had completed more than 180 days in twelve calendar months preceding her termination. The petitioner has prayed that the respondent department be directed to reinstate her by quashing and setting aside the oral termination order along-with the benefits of seniority and continuity from the date of her initial engagement with full back wages. She has further prayed that she be ordered to be regularized as per the Policy of State Government regarding the regularization of the services of daily wagers as she has completed more than 2 years of service with the respondent department.

3. By filling reply, the respondent has contested the claim wherein preliminary objections qua maintainability, engagement of labourers in Tribal area of Lahaul & Spiti every year on seasonal basis as per work requirement and availability of funds with the department, under Kaza

Sub Division, surplus labour with the department and execution of work through machinery, abandonment of work by petitioner on her own, have been taken. It is the stand of the respondent that the services of the petitioner were never dismissed, retrenched discharged or otherwise terminated. Per respondent, since the petitioner had not completed 180 days in any preceding calendar year, the provisions of Section 25-F of the Act are not applicable in the present case. The objection qua jurisdiction of this Court, has also been taken. On merits, by reiterating the averments as made in preliminary objections, it is denied that the case of the petitioner is similar to the case as made out in CWP No. 1271 of 2022. It is further denied that the services of the petitioner were continuous for the purpose of Section 25-B of the Act. It is asserted that there is no requirement of following any provisions of the Act as the petitioner has voluntarily worked for limited period during the working season in the valley. It is further asserted that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The petitioner has no right to claim the engagement with the department on the basis that she had worked for few days as a casual labourer with the department. It is denied that the petitioner is entitled for regularization in terms of the policy issued by the Government. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder is filed.

5. On the pleadings of the parties, this Court formulated the following issues on 19.01.2024.

1. Whether the services of the petitioner were orally terminated by the respondents in the year 2023, without complying with the provisions of the Act, as alleged? OPP
2. If issue no.1 is proved in the affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable in the present form, as alleged? OPR
4. Whether the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act, as alleged? OPR
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Besides having heard the learned counsels for the parties I have also perused the records of the case carefully.

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

Issue No.1	: Yes
Issue No.2	: Entitled for reinstatement with seniority and continuity along-with full back-wages
Issue No.3	: No
Issue No.4	: No
Relief	: Reference answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO 1 & 2

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

10. In support of these issues, the petitioner has stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A, wherein she has reiterated and reaffirmed the contents of her claim petition. She also tendered in evidence copy of Mandays chart Mark PA.

11. During cross-examination, she has denied that she was engaged by the department to do a particular work. She has further denied that in the areas of Lahaul & Spiti the labourer is engaged from May to October every year as a daily wager. She has also denied that in the winter season she has not turned up for work out of her own will and wish. She has denied that she was engaged for a particular work which was temporary in nature. She has further denied that she had left the work on her own and her services were not terminated by the department. She has denied that she had not worked for 180 days in any calendar year. She has expressed her ignorance that the persons mentioned in para 6 of the claim were junior or senior to her. She has denied that her services were never terminated by the department.

12. PW-2 Shri Surender Singh Bisht, Labour Officer Kinnaur has brought the summoned record and stated that demand notice Ex. PW-2/A was raised by the petitioner which was received by the then Labour Officer, Kinnaur on 14.06.2023. During cross-examination, he has admitted that every document received in his office find mentioned in the diary register.

13. Petitioner has also examined Shri Chaman Lal, Senior Assistant from the office of respondent who has appeared in the witness box as PW-3. This witness has brought the summoned record and proved from the same the Mandays chart Mark PA as Ex. PW-3/A. During cross-examination this witness has admitted that he has not produced authorization certificate to depose in evidence before the Court and that neither he is the custodian of record nor the same has been prepared by him.

14. In rebuttal, respondent examined Shri Abhishek Malhotra, Executive Engineer, HPPWD Kaza as RW-1, who has tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated the contents as mentioned in the reply.

15. During cross-examination, he has admitted that the petitioner was engaged in the month of May, 2021 and she has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 59 days in the year 2021 and 214 days in the year 2022. He has denied that the services of petitioner were illegally and orally terminated after November, 2022. He has admitted that no notice under Section 25-F of the Act was issued to the petitioner by the department. He has volunteered that the petitioner was engaged for seasonal work as a casual labour which was concluded in the month of November, 2022 for the year 2022. He has admitted that there is no record with the department to show that the petitioner was engaged for seasonal work as a casual labour. He has admitted that as per Mandays chart Ex. PW-3/A, the petitioner was engaged as a daily waged beldar with the department. He has further admitted that no enquiry was conducted against the petitioner before the termination of her services by the department.

16. This is the entire oral as well as documentary evidence led by the parties.

17. Shri Prateek Kumar, Ld. Counsel for the petitioner has vehemently contended that the petitioner was engaged in services by the respondent department on muster roll basis as a daily

waged beldar in the month of May, 2021 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department regularly and has completed more than 180 days in the twelve calendar months preceding the date of her illegal termination. He further contended that the respondent all of sudden without serving any notice and without payment of compensation terminated the services of the petitioner in utter violation of the provisions of Section 25-F of the Act. It is contended that the respondent department used to give intentional/fictional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized as such the petitioner is also entitled for regularization as per the policy of the State Government issued from time to time.

18. On the contrary, Shri Devender Chandel, Ld. Dy. DA for respondent department has contended that the services of the petitioner have been engaged on seasonal basis as per work requirement and availability of funds and subject to weather conditions of the Spiti Area which is a Tribal area. It is contended that the petitioner had not completed 180 days in any of the calendar year and further that no junior to her was regularized by the department. It is contended that the petitioner herself has abandoned/ discontinued the work with the department. It is further contended that mere fact that no notice was given to the petitioner would not entitle her for her reinstatement with the department. It is further contended that mere fact that no notice was given to the petitioner will not entitle the workman to seek reinstatement with back-wages. In this regard Ld. Dy. DA has placed reliance upon judgment of Hon'ble Supreme Court titled as **District Rural Development Agency Vs. Mukesh Kumar Gainda Lal Jadav SLP (C) No. 15480 of 2022**.

19. I have given a considerable thought to the submissions made by the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Admittedly, the petitioner was engaged as daily waged beldar on muster roll basis by the respondent department in the month of May, 2021 which fact is also clear from the Mandays chart Ex. PW-3/A. It is also not disputed that the petitioner has worked as such continuously till November, 2022 and has completed more than 180 working days in each calendar year from the date of her initial engagement till her termination. The petitioner has claimed that her services were terminated orally without any reason as neither any notice as prescribed under Section 25-F of the Act was issued to her nor she was paid retrenchment compensation. However, per respondent, the services of the petitioner were never terminated, rather on account unavailability of work and funds her services had automatically came to an end. It is also the version of the respondent that the petitioner has abandoned the work and did not turn up. There is no denial of the fact that the petitioner had worked continuously with the respondent department and has completed more than 180 days in the preceding twelve calendar months from the date of her alleged termination.

21. The expression "continuous service" has been defined in Section 25-B of the Act, which in its material part reads as thus:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*

- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
- (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
- (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
- (ii) *two hundred and forty days, in any other case....”*

22. Thus, in terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days (in the instant case 180 days as notified for Tribal areas) within a period of one year, she will be deemed to be in continuous service. The burden of proof is on the petitioner to show that she has worked for 240 days (in Tribal areas 180 days) in the preceding twelve calendar months prior to his/her alleged retrenchment. The law on this issue is well settled. In ***R.M Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been held by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Following the aforesaid principles as laid down it was required from the present petitioner to establish on record that she had worked continuously for a period of 180 days (in a block of 12 calendar months anterior to the date of her alleged termination, which as per the Mandays chart took place on 01.12.2022. The petitioner has categorically deposed in her evidence that from the date of her engagement with the respondent as a daily waged beldar, she has continuously worked till 30.11.2022. Although, the respondent has deposed in his affidavit of evidence that the petitioner has not completed 180 days in any preceding calendar year for which she cannot be said to be in continuous service as per requirement of Section 25 of the Act however this categorical deposition of the respondent is in itself falsified when the petitioner has proved on record the mandays chart Ex. PW-3/A which reflects the contention of the petitioner that she has worked with the department from May, 2021 till November, 2022 thereby completing more than 180 working days in each calendar year. In this regard, it is relevant to mention that PW-3 Shri Chaman Lal, Senior Assistant with the respondent department has proved the Mandays chart Ex. PW-3/A from the record brought by him. Furthermore RW-1 Shri Abhishek Malhotra, Executive Engineer during his cross-examination, has categorically admitted that the petitioner was engaged with the department in the month of May, 2021 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 59 days in the year 2021 and 214 days in the year 2022. Thus, there is abundant evidence led by the petitioner on record to show that she has continuously worked with the department since her initial engagement in the month of May, 2021 till November, 2022 and has completed more than 180 days in each calendar year preceding her alleged termination.

24. It is next contended on behalf of the respondent that the services of the petitioner were never discontinued or terminated by the respondent department as alleged whereas it was the petitioner who on her own has abandoned the services with the respondent department. In so far as this argument of Ld. Counsel is concerned first of all there is no evidence led by the respondent to show that the petitioner has on her own left the services of the respondent department. Nothing is revealed from the record that it was the petitioner who could be held liable for discontinuation of services with the respondent department. Further it is required to be mentioned that on one hand the

respondent department is pleading the conclusion of seasonal work in November, 2022 and on the other hand the respondent department is contending the abandonment of services by the petitioner. It is well settled that abandonment has to be proved by the employer like any other fact. The burden of proving factum of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntary abandonment of work by a workman is required to be established by way of cogent and reliable evidence to be led by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. Mere alleging that the workman had abandoned/left the services is entirely insufficient to discharge the said onus. If for the sake of arguments, if it is accepted that petitioner has voluntarily abandoned the work even then the respondent had not established whether any notice was issued to the petitioner to resume the duty. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice does require that some sort of a fact-finding inquiry must be conducted by the respondent. In the instant case, the evidence reveals that no such enquiry was ever conducted by the respondent. Not even any notice was issued to the petitioner on the part of the respondent regarding alleged absence from duty. It is again well settled that 'animus' to abandon, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer cannot be said to have been established as per law.

25. Thus, from the evidence it is clear that the respondent has failed to prove on record that the engagement of labourers used to be as per availability of work and funds with the department. The respondent has failed to prove that the labourers used to be engaged for the period falling between May to October every year and thereafter due to closure of the areas due to snow no work remain available with the department. Also, this contention of the respondent is falsified from the admitted document i.e. Mandays Chart Ex. PW-3/A which reflects that the workers used to be engaged by the department beyond October month of the year. In the case in hand, it is nowhere disputed that the petitioner has worked with the respondent from the month of May, 2021 till November, 2022, which is clear from the mandays chart Ex. PW-3/A. Meaning thereby the petitioner was engaged by the respondent for the said period only when there was availability of work and funds with the department. Thus, the Mandays chart Ex. PW-3/A, which is a document issued by the department, in itself falsifies the contention of the respondent that the engagement of labourers with the respondent department used to be for a specific period of time i.e. from May till October of every year. It is again relevant to mention here that no document/office order etc. has been led and proved on record by the respondent in order to show that the petitioner was engaged as a casual worker on seasonal basis and not as daily waged beldar on muster roll basis. Bare perusal of mandays chart Ex. PW-3/A, which is document issued by respondent department goes to show that the petitioner has worked with the department as daily waged beldar for the years 2021 and 2022 and not as a casual worker.

26. Thus, the Mandays chart Ex. PW-3/A coupled with the admissions made by RW-1 during his cross-examination in itself dislodge the contention of the respondent that the engagement of labourers in Tribal areas is from the month of May till October every year. If there was no work with the department after October month then for what purpose the services of petitioner were availed during November, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the month November, 2022.

27. It is the petitioner's allegations that the respondent has also violated the provisions of Section 25-H of the Act, in as much as the junior persons to the petitioner have been engaged

continuously without any breaks and further that the respondent department has engaged fresh hands without affording any opportunity to the petitioner and the said juniors are still working with the department who have been granted seniority and continuity, which is totally illegal and against the provisions of the Act. In so far as the said allegations of the petitioner are concerned, the same does not appear to have been substantiated on record. There is no evidence led by the petitioner to establish that new/ fresh workers were appointed by the respondent after the termination of the services of the petitioner or that the juniors to the petitioner were retained. On the other hand, it is contention of the respondent that the persons named in the petition were engaged on daily wage basis and on completion of requisite year of service under the policy, their services were regularized. The burden to establish the said allegation was upon the petitioner who has failed to discharge the same. Thus it cannot be said that the respondent has violated the provisions of Section 25-H and 25-G of the Act in this case.

28. Since, the petitioner has proved to have completed 180 working days during the period of twelve calendar months in the preceding year from the date of her retrenchment, therefore her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, no notice was issued to the petitioner before terminating her services nor any enquiry was held in this regard. Apparently, the provisions of Section 25-F of the Act were not complied with in letter and spirit by the respondent, as no retrenchment compensation has been paid, nor any requisite notice has been served upon the petitioner.

29. It has also been observed in the evidence that the petitioner was initially engaged in the month of May, 2021 & September, 2021 where after she was again reengaged in the month of May, 2022 till November, 2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service and thereafter reengaged her in the month of May, 2022. As per respondent, the engagement in Spiti Valley which is Tribal area, used to be from the month of May till October every year depending upon the availability of work and funds. As already observed in evidence that the respondent has failed to establish that the engagement of labourers used to be for the seasonal work in the Spiti Valley. Had there been the availability of work with the department and in the area only during the period between May to October every year then why the petitioner was re-engaged from May till November, 2022 on the succeeding year. No explanation is forthcoming on the part of respondent in this regard. Therefore, it can safely be held that the action of the Executive Engineer, HPPWD (B& R) Division Kaza to give break in service and thereafter finally terminating her services w.e.f. 01.12.2022 is illegal, unlawful and unjustified.

30. It has been vehemently contended by Ld. Counsel for the respondent that the law has been settled by the Hon'ble Apex Court in various judgments rendered that even assuming that there is apparent non-compliance of Section 25-F of the Act, mere want of notice by itself will not ensure to the benefit of the workman to seek reinstatement with back-wages. In this regard the Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court in case titled as **District Rural Development Agency Vs. Mukesh Kumar Gaimda Lal Jadav SLP (C) No. 15480 of 2022 (consisting Justice R. Subhash Reddy and Justice Sanjeev Khanna)** and **Ram Manohar Lohia Joint Hospital & Ors. Vs. Munna Prasad Sinin and anr., Civil Appeal No. 5810 of 2021 (consisting Justice M.M Sunderesh and Justice Arvind Kumar).**

31. I have gone through the law cited above. **Hon'ble Apex Court in M/s Swadesamitran Ltd., Madras Vs. Workmen 1960-3 SCR 144 (Consisting Justice Gajendergadkar, Justice Subarao and Justice Dass Gupta)** while dealing with an argument that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, observed as follows:—

“Once it is found that the retrenchment is unjustified and improper, it is for the Tribunal below to consider to what relief the retrenched workmen are

entitled. Ordinarily if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workman would not necessarily defeat the claim for reinstatement of the retrenched workman; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of a wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that employer has engaged fresh hands”.

32. In **State Bank of India Vs. N Sundra Money** 1976-3 SCR 160-166, a Divisional Bench of Hon’ble Apex Court consisting of Justice Chandrachud, Justice Krishna Iyer and Justice Gupta has held that certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, in valid and inoperative. After so holding, they proceeded to consider the question of relief to be awarded and observed as follows:—

“What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.”

33. Thus, the perusal of law argued by Ld. DA for respondent and also as cited above, it flows that in the exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back-wages. Hon’ble Three Judge Bench has held in the above cited case laws that the said relief (reinstatement) must be awarded where no special impediment in the way of awarding the relief is clearly shown. In the case in hand nothing has come in the evidence which could show that there is any impediment in granting the relief of reinstatement to the workman. In so far as the factum of labour being in excess to the sanctioned strength and the deployment of machinery for the road works are concerned, no evidence in this regard has been led by the respondent. Hence, the contentions raised by Ld. Dy. DA for respondent on this point are rejected.

34. The petitioner as per his pleadings has claimed full back-wages. She has claimed and deposed that from the date of her illegal termination, she is unemployed. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others (2013) 10 SCC 324**, it has been held by the Hon’ble Supreme Court that the denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages and where an employer wants to deny back wages or contest the employee’s entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

35. To my mind, now if the respondent wanted to avoid the payment of full back-wages, then he had to specifically plead and also lead cogent evidence to prove that the petitioner was gainfully employed and was getting wages equal to the wages she was drawing prior to the termination of her service. Since, in the case in hand, the petitioner has shown that she was not employed, the onus rested on the respondent to specifically plead and prove that the petitioner was gainfully employed and was getting the same or substantially the similar emoluments. However, the same has not been done by the respondent in the present case. Neither, it has been pleaded nor any iota of evidence has been led on record by the respondent to show that the petitioner was gainfully employed. Therefore, I have no hesitation to hold that the petitioner is entitled for full back-wages from the date of her illegal termination i.e. w.e.f. 01.12.2022 till her reinstatement.

36. Thus, in view of the discussion made above, it can safely be held that the termination of the services of the petitioner by the respondent was in violation of the provisions of Sections 25-B and 25-F of the Act. Therefore, the petitioner is held entitled for reinstatement in service with seniority and continuity along-with full back-wages. Both these issues are decided accordingly.

ISSUE NO. 3

37. The burden to prove this issue was upon the respondent. No evidence has been led by the respondent in order to establish that the claim petition is not maintainable. Moreover, I find nothing wrong with this claim petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in the negative and against the respondent.

ISSUE NO. 4

38. In so far as this issue is concerned, the record reveals that initially the petitioner has preferred the claim by invoking the provisions of Section 2-A of the Act, but thereafter, this Court has received the reference from the appropriate government for adjudication. *Vide* order dated 17.01.2025 passed by this Tribunal the application preferred by the petitioner under Section 2-A of the Act was ordered to be clubbed with the reference petition and the said application was ordered to be treated as claim petition in the reference received. Being so it cannot be said that the petition has been filed by the petitioner without complying with the provisions of Section 2-A of the Act. Accordingly, this issue is also answered in the negative and against the respondent.

RELIEF.

39. As a sequel to my above discussion and findings on issues no. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and she is accordingly ordered to be re-instated in service forthwith with seniority and continuity in service with effect from the date of her termination along-with full back-wages. The back-wages shall be payable by the respondent within a period of three months from the date of publication of the award, failing which the same shall carry an interest @ 9% per annum. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th Day of May, 2026.

Sd/-
(PREETI THAKUR)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Shimla (H.P.).

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated the 29th June, 2026

No. HHC/Estt.3(763)/2010.—02 days commuted leave for 04-06-2026 & 05-06-2026, is hereby sanctioned, *ex-post-facto*, in favour of Shri Jai Prakash Verma, Secretary of this Registry.

Certified that Shri Jai Prakash Verma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Jai Prakash Verma, would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order,

Sd/-

Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated the 29th June, 2026

No. HHC/Estt.3(472)/96-I.—04 days commuted leave *w.e.f.* 08-06-2026 to 11-06-2026, is hereby sanctioned, *ex-post-facto*, in favour of Shri Avinash Kant Tiwari, Court Master of this Registry.

Certified that Shri Avinash Kant Tiwari has joined the same post and at the same station from where he had proceeded on leave, after expiry of the above leave period.

Certified that Shri Avinash Kant Tiwari would have continued to officiate the same post of Court Master but for his proceeding on leave.

By order,

Sd/-

Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated the 29th June, 2026

No. HHC/Estt.3(510)/2000-I.—12 days commuted leave on and *w.e.f.* 01-06-2026 to 12-06-2026, with permission to suffix second Saturday and Sunday fell on 13-06-2026 &

14-06-2026, is hereby sanctioned, *ex-post-facto*, in favour of Shri Tarun Mahajan, Secretary of this Registry.

Certified that Shri Tarun Mahajan has joined the same post and at the same station from where he proceeded on leave after expiry of the above leave period.

Certified that Shri Tarun Mahajan would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order,

Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated the 29th June, 2026

No. HHC/Estt.3(660)/2009.—06 days earned leave on and *w.e.f.* 22-06-2026 to 27-06-2026 with permission to prefix Sunday falling on 21-06-2026 and suffix Sunday falling on 28-06-2026, is hereby sanctioned, *ex-post facto*, in favour of Sh. Pradeep Kumar Sharma, Section Officer of this Registry.

Certified that Sh. Pradeep Kumar Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Sh. Pradeep Kumar Sharma, would have continued to officiate the same post of Section Officer but for his proceeding on leave.

By order,

Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated the 29th June, 2026

No. HHC/Estt.3(760)/2010.—66 days leave *i.e.* 22 days earned leave on and *w.e.f.* 08-04-2026 to 29-04-2026 and 44 days commuted leave on and *w.e.f.* 30-04-2026 to 12-06-2026, with permission to suffix second Saturday and Sunday falling on 13-06-2026 & 14-06-2026, is hereby sanctioned, *ex-post-facto*, in favour of Shri Khem Raj Thakur, Secretary of this Registry.

Certified that Shri Khem Raj Thakur has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Khem Raj Thakur would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order,

Sd/-
Registrar General.

कृषि विभाग

अधिसूचना

दिनांक 01 जुलाई, 2026

संख्या : कृषि बी.ओ.एफ./44/2023.—हिमाचल प्रदेश के राज्यपाल, इस विभाग की समसंख्यक अधिसूचना तारीख 25-10-2025 के अनुक्रम में और हिमाचल प्रदेश कृषि एवं औद्योगिकीय उपज विपणन (विकास और विनियमन) अधिनियम, 2005 की धारा 64(1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिमाचल प्रदेश की दुग्ध उत्पादक समितियों को पूर्वोक्त अधिनियम की धारा 2(क) के साथ पठित धारा 71(1) के अधीन अनुसूचित मद “दूध” पर पूर्वोक्त अधिनियम की धारा 44 और 45 के अधीन यथा विहित फीस का संदाय करने से 1 अप्रैल, 2024 से 31 अक्टूबर, 2025 तक और छूट प्रदान करते हैं।

आदेश द्वारा,

सी पालरासू
सचिव (कृषि)।

[Authoritative English text of this Department Notification No. Agr. BOF/44/2023, dated 01-07-2026 as required under clause (3) of Article 348 of the Constitution of India].

AGRICULTURE DEPARTMENT

NOTIFICATION

Shimla-171 002, the 1st July 2026

No. Agr. BOF/44/2023.—In continuation to this department's Notification of even No. dated 25-10-2025 and in exercise of the powers conferred by Section 64(1) of Himachal Pradesh Agricultural and Horticultural Produce Marketing (Development and Regulation) Act, 2005, the Governor, Himachal Pradesh is further pleased to exempt the milk producing societies of Himachal Pradesh from paying the market fee as prescribed under section 44 and 45 of the Act *ibid* on “Milk”, a scheduled item under section 71(1) read with Section 2(a) of the Act *ibid*, *w.e.f.* 1st April, 2024 to 31st October, 2025.

By order,

C. PAULRASU,
Secretary (Agriculture).

FINANCE DEPARTMENT**NOTIFICATION***Shimla-171 002, the 2nd July, 2026*

No. Fin-2-C(12)-1/2026.—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (securities) of **13-year** tenure for an aggregate amount of **₹700 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated November 06, 2025 of Government of Himachal Pradesh.

Object of the Loan

1. (i) The proceed of the State Government Securities will be utilize for the development programme of the State of Himachal Pradesh.
- (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003, dated November 06, 2025 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders

3. The Government Stock up to 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure – II).

Place and Date of Auction

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai-400 001 on **July 07, 2026**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **July 07, 2026**.

- (a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M
- (b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **July 08, 2026**.

Method of Payment

6. Successful bidders will make payments on **July 08, 2026** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/ New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort) /New Delhi.

Tenure

7. The Stock will be of **13-year** tenure. The tenure of the Stock will commence on **July 08, 2026**.

Date of Repayment

8. The loan will be repaid at par on **July 08, 2039**.

Rate of Interest

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **January 08 and July 08**.

Eligibility of Securities

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under Section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh.

Sd/-
(DEVESH KUMAR, IAS),
Principal Secretary (Finance).

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION

Vidyut Aayog Bhawan, SDA Complex, Block-37, Kasumpti, Shimla-171 009

E-mail: secy-hperc@hp.gov.in hperc@rediffmail.com Website: <http://www.hperc.org>

NOTIFICATION

Dated, the 2nd July, 2026

No. HPERC-H(1)-10/2026.—In exercise of the powers conferred under Regulation 7 of the Himachal Pradesh Electricity Grid Code, Regulations, 2026, the Himachal Pradesh Electricity Regulatory Commission hereby approves constitutions of the Grid Code Review Committee as under:—

Sl. No.	Name & designation	Representing from	
1.	The Director (Projects), HPPTCL (STU), Himachal Pradesh.	State Transmission Utility	<i>Chairman</i>
2.	The Director (Technical), HPSEBL, Himachal Pradesh.	Distribution Licensee	<i>Member</i>
3.	The Director (Electrical), HPPCL, Himachal Pradesh.	HPPCL	<i>Member</i>
4.	The Chief Engineer, HPSLDC, Himachal Pradesh.	SLDC	<i>Member</i>
5.	The Chief Engineer (Electrical System), HPSEBL, Himachal Pradesh	Distribution Licensee	<i>Member</i>
6.	The General Manager (Projects), HPPTCL (STU), Himachal Pradesh.	State Transmission Utility	<i>Convener</i>
7.	The Chief Engineer (Energy), Directorate of Energy, Himachal Pradesh.	Energy Department of Govt. of H.P.	<i>Member</i>
8.	One representative each from BBMB, NRPC and NRLDC may participate in the Committee as a special invitee.	Concerned Organization	<i>Member</i>
9.	One representative from EHT Consumers/ Open Access Consumers connected on 132 kV & above (on rotation) in the Himachal Pradesh.	Industrial Consumers/Open Access Consumers	<i>Member</i>
10.	One representative from IPPs/CPPs/REGs having consolidated capacity of 10 MW & above (on rotation) in Himachal Pradesh.	Generator	<i>Member</i>

1. The Chairman and members shall hold office by the virtue of position held by them in their respective organization until changed/replaced by the respective organization/consumers group.

2. A member of the Grid Code Review Committee, who is a government officer or an employee/officer of any government instrumentality or of any Public Sector Undertaking, shall draw Travelling Allowance and Daily Allowance from his/her parent department or organization.

3. Representative mentioned at Sl. No. 8, 9 & 10 in the above table shall be nominated by the Convener in consultation with the Chairman of the Grid Code Review Committee for respective meeting.

By order of the Commission,

Sd/-
Secretary.

हिमाचल प्रदेश चौदहवीं विधान सभा

अधिसूचना

दिनांक 02 जुलाई, 2026

सं०: विस०-विधायन-समिति गठन/1-14/2018.—इस सचिवालय की समसंख्यक अधिसूचना दिनांक 18 अप्रैल, 2026 की निरंतरता में अध्यक्ष, हिमाचल प्रदेश विधान सभा द्वारा वर्ष 2026-2027 के

लिए गठित विशेषाधिकार समिति में आंशिक परिवर्तन करते हुए निम्न सदस्यों को बतौर सदस्य नामांकित किये हैं :—

विशेषाधिकार समिति

1.	माननीय अध्यक्ष	. . सभापति
2.	श्री संजय रत्न	. . सदस्य
3.	श्रीमती रीना कश्यप	. . सदस्य
4.	श्री नीरज नैय्यर	. . सदस्य
5.	श्री रणवीर सिंह (निक्का)	. . सदस्य
6.	श्री लोकेन्दर कुमार	. . सदस्य
7.	श्री सुदर्शन सिंह बबलू	. . सदस्य

सचिव,
हि0प्र0 विधान सभा।

OFFICE OF THE MUNICIPAL CORPORATION, SOLAN
The Solan Municipal Corporation (Registration and Control of Pet Dogs) Bye-laws, 2026
(First Amendment)

NOTIFICATION

Solan, the 3rd July, 2026

No.: MC-SLN(F)Dog stl (4) 113/21.—Whereas Municipal Corporation Solan has amended the “The Solan Municipal Corporation (Registration and Control of Pet Dogs) Bye-laws, 2022”, in exercise of the powers conferred by Section 395 under Chapter-XXII of Himachal Pradesh Municipal Corporation Act, 1994 (Act No.12 of 1994) the following Bye-laws are hereby published for general public as required under Section 397 of the said Act and shall come into force within limits of Municipal Corporation Solan from the date of publication of this notification in the Rajpatra (e-gazette) of Himachal Pradesh.

If any person, likely to be affected by these bye-laws has any objection(s) and suggestion(s) with regard to these amended bye laws, he/she may send the same to the office of the Commissioner, Municipal Corporation Solan by post or in person or through email on mcorp.solan@gmail.com within a period of thirty days from the date of publication of the said draft of Bye-laws in the Rajpatra (e-gazette) of the Himachal Pradesh.

The objection(s) and suggestion(s), if any, received within the above stipulated period shall be taken into consideration by the Municipal Corporation Solan before finalizing these Bye-laws, namely:—

The Solan Municipal Corporation (Registration and Control of Pet Dogs) Bye-laws,—
(First Amendment), 2026

1. Short title, extent and commencement.—(a) These Bye-Laws may be called The Solan Municipal Corporation (Registration and Control of Pet Dogs) Bye-laws,—(First Amendment), 2026.

(b) These Bye-Laws shall come into force on the date of their adoption and publication in the Rajpatra (e-gazette) of Himachal Pradesh Government.

(c) These Bye-Laws shall apply to entire Solan Municipal Corporation area.

2. Amendment of clause 3.—Procedure for Registration of Dogs:—

In Clause 3 after the words “On and from the date of publication of these Bye-laws, registration of Pet Dog(s) (hereinafter mentioned as dog) above the age of three months, kept within the jurisdiction of Municipal Corporation, Solan shall be compulsory. The owner of Dog, on or before the first day of April of every year or within seven days of its arrival, register such dog in a Form as prescribed by the Commissioner, Municipal Corporation, Solan (Annexure-A) accompanied by a fee of Rs.500/- per dog as one time registration fees along with two recent photographs of the dog and a copy of vaccination certificate from a Government Veterinary Practitioner or Veterinary Practitioner duly registered with Indian Veterinary Council (IVC) or State Veterinary Council (SVC). Further, an amount of Rs.1500/- per dog shall be charged as license fees annually. However, a blind person keeping dog and using solely for his/her guidance shall be exempted from the payment of registration fee. On registration, the Registration Authority shall issue a metal token to be attached with the collar to be worn by the dog and in case of loss or destruction of the token; a duplicate token shall be issued to the owner on submission of an application along with a fee of Rs.500/- per token. The registration once made shall remain valid for full life span of the dog. In case of death of the dog, the owner of the dog shall immediately inform the Registration Authority. A family may keep maximum of two dogs”.

The words “The annual renewal of license fees for the dog of Indian breeds and stray dogs shall be charged Rs. 500/- per annum per dog instead of Rs.1500/- per annum”, shall be added.

Sd/-
Commissioner,
Municipal Corporation, Solan.

समक्ष नायब तहसीलदार, तहसील नादौन, जिला हमीरपुर (हि0प्र0)

श्रीमती पूनम जरयाल पत्नी सुग्रीव चन्द, महाल मनसोली, मौजा सपड़ोह, तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

बनाम

आम जनता

श्रीमती पूनम जरयाल पत्नी सुग्रीव चन्द, महाल मनसोली, मौजा सपड़ोह, तहसील नादौन, जिला हमीरपुर (हि0प्र0) ने दिनांक 27-06-2026 को इस कार्यालय में एक प्रार्थना-पत्र प्रस्तुत किया है। जिसमें प्रार्थिया ने अनुरोध किया है कि प्रार्थिया का नाम कागजात माल महाल सासन रैन्थल मौजा सपड़ोह, तहसील नादौन, जिला हमीरपुर में पूनम देवी पत्नी सुग्रीव चन्द दर्ज है, परन्तु अन्य जगह जैसा कि आधार कार्ड, परिवार नकल आदि में प्रार्थिया का नाम पूनम जरयाल पत्नी सुग्रीव चन्द दर्ज है। प्रार्थिया का कहना है कि यह दोनों नाम उसके हैं। प्रार्थिया अपना नाम अब दुरुस्त करवाकर कागजात माल महाल सासन रैन्थल, मौजा सपड़ोह, तहसील नादौन, जिला हमीरपुर में पूनम जरयाल पत्नी सुग्रीव चन्द दर्ज करवाना चाहती है।

अतः इस सरकारी गजट द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थिया के नाम को दुरुस्त करवाने बारे कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख 29-07-2026 को सुबह 10.00 बजे मुकाम तहसील कार्यालय नादौन हाजिर अदालत होकर अपना उजर/एतराज पेश कर सकता है। तारीख पेशी के बाद किसी किस्म का एतराज काबिले समायत न होगा तथा प्रार्थिया के प्रार्थना-पत्र के अनुसार नाम दुरुस्ती बारे आवश्यक आदेश पारित कर दिए जायेंगे।

यह इश्तहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 27-06-2026 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार,
तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

ब अदालत तहसीलदार नादौन एवं सहायक समाहर्ता प्रथम श्रेणी, नादौन, तहसील नादौन,
जिला हमीरपुर (हि0प्र0)

आगामी सुनवाई : 27-07-2026

श्रीमती शकुन्तला कौशल पुत्री कालू राम, निवासी गुरेड, मौजा कोहला, तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना-पत्र बराए नाम दुरुस्ती बारे।

श्रीमती शकुन्तला देवी पुत्री कालू राम, निवासी गुरेड, मौजा कोहला, तहसील नादौन, जिला हमीरपुर (हि0प्र0) ने दिनांक 25-06-2026 को इस अदालत में एक प्रार्थना-पत्र प्रस्तुत किया है कि उसका नाम कागजात माल टीका गुरेड, कोहला खास व कलूर, मौजा कोहला, तहसील नादौन, जिला हमीरपुर में शकुन्तला देवी दर्ज है, परन्तु अन्य जगह उसका नाम शकुन्तला कौशल दर्ज है। प्रार्थिया का कहना है कि ये दोनों नाम उसी के हैं। प्रार्थिया अब दुरुस्ती करवाकर कागजात माल टीका गुरेड, कोहला खास व कलूर, मौजा कोहला, तहसील नादौन, जिला हमीरपुर में अपना नाम शकुन्तला कौशल दर्ज करवाना चाहती है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थिया का नाम दुरुस्त करने बारे कोई उजर एवं एतराज हो तो वह असालतन या वकालतन तारीख पेशी 27-07-2026 को दोपहर 2.00 बजे मुकाम नादौन हाजिर अदालत होकर अपना उजर पेश कर सकता है। तारीख पेशी के बाद किसी किस्म का एतराज काबिले समायत न होगा तथा प्रार्थिया के प्रार्थना-पत्र पर नाम दुरुस्ती बारे आवश्यक आदेश पारित कर दिये जायेंगे।

यह इश्तहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 27-06-2026 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
नादौन, तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

ब अदालत तहसीलदार नादौन एवं सहायक समाहर्ता प्रथम श्रेणी, नादौन, तहसील नादौन,
जिला हमीरपुर (हि0प्र0)

आगामी सुनवाई : 15-07-2026

श्री प्रवीण कुमार शर्मा पुत्र वालकिशन उपनाम रोशन लाल, गांव वदारन मौजा हथोल, तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराए नाम दुरुस्ती बारे।

श्री प्रवीण कुमार शर्मा पुत्र वालकिशन उपनाम रोशन लाल, गांव वदारन, मौजा हथोल, तहसील नादौन, जिला हमीरपुर (हि0प्र0) ने दिनांक 16-06-2026 को इस अदालत में एक प्रार्थना—पत्र प्रस्तुत किया है कि उसका नाम कागजात माल टीका वदारन, मौजा हथोल, तहसील नादौन, जिला हमीरपुर में प्रवीण कुमार दर्ज है, परन्तु अन्य जगह उसका नाम प्रवीण कुमार शर्मा दर्ज है। प्रार्थी का कहना है कि ये दोनों नाम उसी के हैं। प्रार्थी अब दुरुस्ती करवाकर कागजात माल टीका वदारन, मौजा हथोल, तहसील नादौन, जिला हमीरपुर में अपना नाम प्रवीण कुमार शर्मा दर्ज करवाना चाहता है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी का नाम दुरुस्त करने बारे कोई उजर एवं एतराज हो तो वह असालतन या वकालतन तारीख पेशी 15-07-2026 को दोपहर 2.00 बजे मुकाम नादौन हाजिर अदालत होकर अपना उजर पेश कर सकता है। तारीख पेशी के बाद किसी किस्म का एतराज काबिले समायत न होगा तथा प्रार्थी के प्रार्थना—पत्र पर नाम दुरुस्ती बारे आवश्यक आदेश पारित कर दिये जायेंगे।

यह इशतहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 18-06-2026 को जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी,
नादौन, तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

**In the Court of Tehsildar-cum-Executive Magistrate, Dhatwal at Bijhari,
Distt. Hamirpur (H.P.)**

In the matter of :

Asha Kumari

Versus

General Public

Notice to General Public.

Asha Kumari d/o Jagdish Chand, Village & P.O. Chakmoh, Tehsil Dhatwal at Bijhari, Distt. Hamirpur (H.P.) has applied in this office for the entry of her date of birth, which took place on 13-2-1975 but due to ignorance it could not be entered in the record of Gram Panchayat Chakmoh.

In this regard, the applicant Asha Kumari has submitted the requisite documents mentioning her date of birth as 13-2-1975.

General public is hereby informed through this notice that if anyone has any objection regarding the entry of date of birth of the applicant *i.e.* 13-02-1975, they can either in person or through counsel can file their objections before the undersigned within 30 days from the date of publication of this notice, otherwise the matter shall be proceeded further accordingly.

Issued under my hand and seal of the court on 19-06-2026.

Seal.

Sd/-

*Executive Magistrate,
Dhatwal at Bijhari, District Hamirpur (H.P.).*

**In the Court of Sub-Divisional Magistrate, Exercising the Power of Marriage Office, Nadaun,
District Hamirpur (H.P.)**

In the matter of :

1. Akshay Kumar s/o Vimal Kumar, Village Jhagrial, Post Office Sera, Tehsil Nadaun, Distt. Hamirpur (H.P.).

2. Sangeeta d/o Kuldeep Kumar, r/o Village Malankar, Post Office Sera, Tehsil Nadaun, Distt. Hamirpur (H.P.).

Subject.— Proclamation for the registration of marriage under section 5 of Special Marriage Act, 1976.

Akshay Kumar & Sangeeta have filed an application u/s 5 of Special Marriage Act, 1954 alongwith affidavits and supporting documents in the court of undersigned in which they have stated that they intend to solemnize their marriage within next three calendar months.

Therefore, the General Public is hereby informed through this notice that if any person having any objection regarding this marriage may file his/her objections personally or in writing before this court on or before 14-08-2026 at 11.00 A.M. In case no objection is received by 14-08-2026 at 11.00 A.M. it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 08-06-2026.

Seal.

Sd/-

*Sub-Divisional Magistrate-cum-
Marriage Officer, Nadaun, District Hamirpur (H.P.).*

**In the Court of Sub-Divisional Magistrate, Exercising the Power of Marriage Office, Nadaun,
District Hamirpur (H.P.)**

In the matter of :

1. Manish Kumar s/o Sh. Rajender Kumar, r/o Village Thidial, Post Office Sudhial, Tehsil Nadaun, Distt. Hamirpur (H.P.)

2. Ishika d/o Bipan Kumar, r/o Village Bhati Lohar Pangh, Post Office Sai, Tehsil Thural, Distt. Kangra (H.P.)

Subject.— Proclamation for the registration of marriage under section 5 of Special Marriage Act, 1976.

Manish Kumar & Ishika have filed an application u/s 5 of Special Marriage Act, 1954 alongwith affidavits and supporting documents in the court of undersigned in which they have stated that they intend to solemnize their marriage within next three calendar months.

Therefore, the General Public is hereby informed through this notice that if any person having any objection regarding this marriage may file his/her objections personally or in writing before this court on or before 29-07-2026 at 11.00 A.M. In case no objection is received by 29-07-2026 at 11.00 A.M. it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 08-06-2026.

Seal.

Sd/-

*Sub-Divisional Magistrate-cum-
Marriage Officer, Nadaun, District Hamirpur (H.P.).*

**In the Court of Sub-Divisional Magistrate, Exercising the Power of Marriage Office, Nadaun,
District Hamirpur (H.P.)**

In the matter of :

1. Nishabh age 27 years s/o Jagan Nath, r/o Village Bann, Post Office Jol Sapar, Tehsil Nadaun, District Hamirpur (H.P.)

2. Archna age 24 years d/o Vinod Goswami, r/o House No. 305 Ward No.-7 Housing Board Clony, Nalti Road, Hamirpur, Tehsil & Distt. Hamirpur (H.P.).

Subject.— Proclamation for the registration of marriage under section 5 of Special Marriage Act, 1976.

Nishabh & Archna have filed an application u/s 5 of Special Marriage Act, 1954 alongwith affidavits and supporting documents in the court of undersigned in which they have stated that they intend to solemnize their marriage within next three calendar months.

Therefore, the General Public is hereby informed through this notice that if any person having any objection regarding this marriage may file his/her objections personally or in writing before this court on or before 14-08-2026 at 11.00 A.M. In case no objection is received by 14-08-2026 at 11.00 A.M. it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 20-06-2026.

Seal.

Sd/-

*Sub-Divisional Magistrate-cum-
Marriage Officer, Nadaun, District Hamirpur (H.P.).*

**In the Court of Sub-Divisional Magistrate, Exercising the Power of Marriage Office, Nadaun,
District Hamirpur (H.P.)**

In the matter of :

1. Amit Kumar Dhiman s/o Vijay Kumar, r/o Village Khohar, Post Office Manjhiar, Tehsil Nadaun, District Hamirpur (H.P.)

2. Shivalika Devi d/o Balbir Singh, r/o Village Rinna, Post Office Bhadwar, Tehsil Nurpur, Distt. Kangra (H.P.)

Versus

General Public

Subject.— *Notice for Registration of Marriage Under Special Marriage Act, 1954.*

The above applicants have filed an application u/s 16 of Special Marriage Act, 1954 alongwith affidavits and supporting documents in the court of undersigned in which they have stated that they have solemnized their marriage on date 08-03-2026 at Shiv Mahadev, Village Purtiala, Post Office Kohala, Distt. Kangra and they are living as husband and wife since then, hence their marriage may be registered.

Therefore, the general public is hereby informed through this notice that if any person who have any objection regarding this marriage can file the objections personally or in writing before this office on or before 31-07-2026 at 11.00 A.M. The objection(s) after 31-07-2026 at 11.00 A.M. will not be entertained by this office and then the marriage will be registered accordingly as per the law prescribed.

Issued on this 18-06-2026 under my hand and seal of this office.

Seal.

Sd/-

*Sub-Divisional Magistrate-cum-Marriage Officer,
Nadaun, Distt. Hamirpur (H.P.).*

**In the Court of Swati Dogra, HPAS Marriage Officer-cum-Sub-Divisional Magistrate, Barsar,
District Hamirpur (H.P.)**

In the matter of :

1. Sh. Punit Kumar s/o Sh. Braham Dass, r/o Village Kotlu, P.O. Bahina, Tehsil Barsar, District Hamirpur (H.P.).

2. Ms. Krishma Kumari d/o Sh. Karam Chand, r/o Village & P.O. Chakmoh, Tehsil Dhatwal at Bijhari, District Hamirpur (H.P.) .. Applicants.

Versus

General Public

Subject.— Notice for Registration of Marriage.

Sh. Punit Kumar and Mrs. Krishma Kumari have filed an application u/s 15 & 16 of Special Marriage Act, 1954 alongwith affidavits and supporting documents in the court of undersigned, stating therein that they have solemnized their marriage on 19-06-2026. Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage may file his/her objections personally or in writing before this court on or before 23-07-2026. In case no objection is received by 23-07-2026, it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 22-06-2026.

Seal.

Sd/-
Marriage Officer-cum-SDM,
Sub-Division Barsar (H.P.).

**In the Court of Swati Dogra, HPAS Marriage Officer-cum-Sub-Divisional Magistrate, Barsar,
District Hamirpur (H.P.)**

In the matter of :

1. Sh. Harpal Singh s/o Sh. Naval Kishore, r/o Village & P.O. Samtana Kalan, Tehsil Barsar, District Hamirpur (H.P.).

2. Ms. Seema d/o Sh. Nikku Ram, r/o Village Ghoita Rajputan, P.O. Ghumarli, Tehsil Dhatwal at Bijhari, District Hamirpur (H.P.) .. Applicants.

Versus

General Public

Subject.— Notice for Registration of Marriage.

Sh. Harpal Singh and Mrs. Seema have filed an application u/s 15 & 16 of Special Marriage Act, 1954 alongwith affidavits and supporting documents in the court of undersigned, stating therein that they have solemnized their marriage on 18-06-2026. Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage may file his/her objections personally or in writing before this court on or before 23-07-2026. In case no objection is received by 23-07-2026, it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 22-06-2026.

Seal.

Sd/-
Marriage Officer-cum-SDM,
Sub-Division Barsar (H.P.).

**In the Court of Swati Dogra, HPAS Marriage Officer-cum-Sub-Divisional Magistrate, Barsar,
District Hamirpur (H.P.)**

In the matter of :

1. Sh. Tanuj Kumar s/o Sh. Rattan Chand, r/o Village & P.O. Nara, Tehsil Barsar, District Hamirpur (H.P.).

2. Ms. Krishana wd/o Sh. Kunwar Bahadur, r/o Village & P.O. Ghanauli, District Rupnagar, State Punjab-140 113 (P.B.) .. Applicants.

Versus

General Public

Subject.— Notice for Registration of Marriage.

Sh. Tanuj Kumar and Mrs. Krishana have filed an application u/s 15 & 16 of Special Marriage Act, 1954 alongwith affidavits and supporting documents in the court of undersigned, stating therein that they have solemnized their marriage on 22-06-2026. Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage may file his/her objections personally or in writing before this court on or before 23-07-2026. In case no objection is received by 23-07-2026, it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 23-06-2026.

Seal.

Sd/-
Marriage Officer-cum-SDM,
Sub-Division Barsar (H.P.).

समक्ष नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)

मिसल नं0 : 821859/2026

तारीख मजरुआ : 20-05-2026

तारीख पेशी : 15-07-2026

श्री रोविन सिंह पुत्र श्री महिन्द्र सिंह पुत्र गोरखु, निवासी महाल मुकतेहड़, मौजा थाना, तहसील बड़ोह, जिला कांगडा (हि0प्र0) ... प्रार्थी।

बनाम

आम जनता

... फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती।

श्री रोविन सिंह पुत्र श्री महिन्द्र सिंह पुत्र गोरखु, निवासी महाल मुकतेहड़, मौजा थाना, तहसील बड़ोह, जिला कांगडा (हि0प्र0) ने अदालत में दिनांक 20-05-2026 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि प्रार्थी का वास्तविक नाम रोविन सिंह है जोकि राजस्व अभिलेख महाल गढी में भी दर्ज है, परन्तु प्रार्थी का नाम राजस्व अभिलेख महाल मुकतेहड़ में रोविन दर्ज हो चुका है, जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में आवाहन पत्र तलबाना, नकल जमाबंदी, स्व घोषणा पत्र, पैना

कार्ड, शिक्षा प्रमाण-पत्र व आधार कार्ड साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपने नाम की दुरुस्ती के आदेश पारित करने हेतु आग्रह किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी भी व्यक्ति को राजस्व अभिलेख महाल मुकतेहड़ में प्रार्थी का नाम रोविन के स्थान पर रोविन सिंह पुत्र महिन्द्र सिंह पुत्र गोरखु, निवासी महाल मुकतेहड़, मौजा थाना, तहसील बड़ोह, जिला कांगडा (हि0प्र0) के नाम दुरुस्ती करने बारे कोई उजर एतराज हो तो यह असालतन या वकालतन तारीख पेशी 15-07-2026 को 10.00 बजे इस अदालत में हाजिर होकर अपना उजर-एतराज पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाएगी और नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिये जाएंगे।

यह इशतहार आज दिनांक 16-06-2026 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)।

समक्ष नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)

मिसल नं0 : 821867 / 2026

तारीख मजरूआ : 18-06-2026

तारीख पेशी : 23-07-2026

श्री मनीष पाल पुत्र मजन सिंह पुत्र वेली, निवासी महाल बाग सपयाड़ा, मौजा दनोआ, तहसील बड़ोह, जिला कांगडा (हि0प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती।

श्री मनीष पाल पुत्र मजन सिंह पुत्र वेली, निवासी महाल बाग सपयाड़ा, मौजा दनोआ, तहसील बड़ोह, जिला कांगडा (हि0प्र0) ने अदालत में दिनांक 18-06-2026 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि प्रार्थी का वास्तविक नाम मनीष पाल है, परन्तु प्रार्थी का नाम राजस्व अभिलेख महाल बाग सपयाड़ा में मनीष कुमार दर्ज हो चुका है, जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में आवाहन पत्र तलबाना, नकल जमाबंदी, स्व घोषणा-पत्र, परिवार नकल, शिक्षा प्रमाण-पत्र व पासपोर्ट साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपने नाम की दुरुस्ती के आदेश पारित करने हेतु आग्रह किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी भी व्यक्ति को राजस्व अभिलेख महाल बाग सपयाड़ा में प्रार्थी का नाम मनीष कुमार के स्थान पर मनीष पाल पुत्र मजन सिंह पुत्र वेली, निवासी महाल बाग सपयाड़ा, मौजा दनोआ, तहसील बड़ोह, जिला कांगडा (हि0प्र0) के नाम दुरुस्ती करने बारे में कोई उजर एतराज हो तो यह असालतन या वकालतन तारीख पेशी 23-07-2026 को 10.00 बजे इस अदालत में हाजिर हो कर अपना उजर-एतराज पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाएगी और नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिये जाएंगे।

यह इशतहार आज दिनांक 20-06-2026 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ है।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)।

समक्ष नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)

मिसल नं० : 821868/2026

तारीख मजरुआ : 18-06-2026

तारीख पेशी : 23-07-2026

विकास शर्मा पुत्र प्रीतम चन्द पुत्र परस राम, निवासी महाल कलरू, मौजा बूसल, तहसील बड़ोह, जिला कांगडा (हि0प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती।

विकास शर्मा पुत्र प्रीतम चन्द पुत्र परस राम, निवासी महाल कलरू, मौजा बूसल, तहसील बड़ोह, जिला कांगडा (हि0प्र0) ने अदालत में दिनांक 18-06-2026 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि प्रार्थी का वास्तविक नाम विकास शर्मा है व प्रार्थी के पिता का वास्तविक नाम प्रीतम चन्द है, परन्तु राजस्व अभिलेख महाल पटोहड़ में प्रार्थी का नाम विकाश और प्रार्थी के पिता का नाम प्रीतम लाल व राजस्व अभिलेख महाल भटेहड़ में प्रार्थी का नाम विकास और प्रार्थी के पिता का नाम प्रीतम लाल दर्ज हो चुका है, जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में आवाहन पत्र तलबाना, नकल जमाबंदी, स्वघोषणा-पत्र, बी0पी0एल0 प्रमाण-पत्र, शिक्षा प्रमाण-पत्र, पैन कार्ड, राशन कार्ड व आधार कार्ड साथ संलग्न कर रखे हैं। अब प्रार्थी ने राजस्व अभिलेख महाल पटोहड़ व महाल भटेहड़ में अपना व अपने पिता के नाम की दुरुस्ती के आदेश पारित करने हेतु आग्रह किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी भी व्यक्ति को राजस्व अभिलेख महाल पटोहड़ में प्रार्थी का नाम विकास के स्थान पर विकास शर्मा पुत्र प्रीतम चन्द और प्रार्थी के पिता का नाम प्रीतम लाल के स्थान पर प्रीतम चन्द पुत्र परस राम व राजस्व अभिलेख महाल भटेहड़ में प्रार्थी का नाम विकास के स्थान पर विकास शर्मा पुत्र प्रीतम चन्द और प्रार्थी के पिता का नाम प्रीतम लाल के स्थान पर प्रीतम चन्द पुत्र परस राम, निवासी महाल कलरू, मौजा बूसल, तहसील बड़ोह, जिला कांगडा (हि0प्र0) के नाम दुरुस्ती करने बारे कोई उजर एतराज हो तो यह असालतन या वकालतन तारीख पेशी 23-07-2026 को 10.00 बजे इस अदालत में हाजिर हो कर अपना उजर-एतराज पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाएगी और नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिये जाएंगे।

यह इशतहार आज दिनांक 20-06-2026 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ है।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)।

समक्ष नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)

मिसल नं० : 821869/2026

तारीख मजरुआ : 18-06-2026

तारीख पेशी : 23-07-2026

मुकेश पुत्र प्रेम चन्द पुत्र सराफू, निवासी महाल ओबरा, मौजा बाड़ी, तहसील बड़ोह, जिला कांगडा (हि0प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती।

मुकेश पुत्र प्रेम चन्द पुत्र सराफू, निवासी महाल ओबरा, मौजा बाड़ी, तहसील बड़ोह, जिला कांगड़ा (हि0प्र0) ने अदालत में दिनांक 18-06-2026 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि प्रार्थी का वास्तविक नाम मुकेश है, परन्तु प्रार्थी का नाम राजस्व अभिलेख महाल ओबरा में मुकेश कुमार दर्ज हो चुका है, जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में आवाहन पत्र तलबाना, नकल जमाबंदी, स्वघोषणा-पत्र, शिक्षा प्रमाण-पत्र व आधार कार्ड साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपने नाम की दुरुस्ती के आदेश पारित करने हेतु आग्रह किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी भी व्यक्ति को राजस्व अभिलेख महाल ओबरा में प्रार्थी का नाम मुकेश कुमार के स्थान पर मुकेश पुत्र प्रेम चन्द पुत्र सराफू, निवासी महाल ओबरा, मौजा बाड़ी, तहसील बड़ोह, जिला कांगड़ा (हि0प्र0) के नाम दुरुस्ती करने बारे कोई उजर एतराज हो तो यह असालतन या वकालतन तारीख पेशी 23-07-2026 को 10.00 बजे इस अदालत में हाजिर होकर अपना उजर-एतराज पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाएगी और नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिये जाएंगे।

यह इशतहार आज दिनांक 20-06-2026 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ है।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बड़ोह, जिला कांगड़ा (हि0प्र0)।

समक्ष तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
तहसील बड़ोह, जिला कांगड़ा (हि0प्र0)

मिसल नं0 : 708447 / 2026

तारीख मजरूआ : 09-06-2026

तारीख पेशी : 24-07-2026

श्री सुभाष चन्द पुत्र प्रीतम चन्द, निवासी महाल कलरू, मौजा वूसल, तहसील बड़ोह, जिला कांगड़ा (हि0प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती।

श्री सुभाष चन्द पुत्र प्रीतम चन्द, निवासी महाल कलरू, मौजा वूसल, तहसील बड़ोह, जिला कांगड़ा (हि0प्र0) ने अदालत में दिनांक 09-06-2026 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि उसका वास्तविक नाम सुभाष चन्द है व उसके पिता का नाम प्रीतम चन्द है, परन्तु राजस्व अभिलेख महाल कलरू, मौजा वूसल, तहसील बड़ोह में सुभाष कुमार व पिता का नाम प्रीतम दर्ज हो चुका है, जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में आवाहन पत्र तलबाना, नकल जमाबंदी, स्वघोषणा-पत्र, परिवार नकल, शिक्षा प्रमाण-पत्र, आधार कार्ड साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपने नाम की दुरुस्ती व अपने पिता के नाम की दुरुस्ती के आदेश पारित करने हेतु आग्रह किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी भी व्यक्ति को राजस्व अभिलेख महाल कलरू, मौजा वूसल में सुभाष कुमार के नाम के साथ उपनाम सुभाष चन्द व प्रीतम के नाम के साथ उपनाम प्रीतम चन्द, निवासी महाल कलरू, मौजा वूसल के नाम दुरुस्ती करने बारे कोई उजर एतराज हो तो वह असालतन या वकालतन तारीख पेशी 24-07-2026 को 10.00 बजे इस अदालत में हाजिर होकर अपना उजर-एतराज पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाएगी और नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिये जाएंगे।

यह इशतहार आज दिनांक 25-06-2026 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ है।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)।

**समक्ष तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)**

मिसल नं0 : 708445/2026

तारीख मजरूआ : 09-06-2026

तारीख पेशी : 24-07-2026

श्री करतार सिंह पुत्र मसदी, निवासी महाल खज्जी, मौजा सदूं, तहसील बड़ोह, जिला कांगडा (हि0प्र0)
... प्रार्थी।

बनाम

आम जनता

... फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती।

श्री करतार सिंह पुत्र मसदी, निवासी महाल खज्जी, मौजा सदूं, तहसील बड़ोह, जिला कांगडा (हि0प्र0) ने अदालत में दिनांक 09-06-2026 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि उसका वास्तविक नाम करतार सिंह है, परन्तु राजस्व अभिलेख महाल खज्जी, मौजा सदूं में करतार चन्द दर्ज हो चुका है, जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में आवाहन पत्र तलबाना, नकल जमाबंदी, स्वघोषणा-पत्र, परिवार नकल, बच्चे का शिक्षा प्रमाण-पत्र, आधार कार्ड साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपने नाम की दुरुस्ती के आदेश पारित करने हेतु आग्रह किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी भी व्यक्ति को राजस्व अभिलेख महाल खज्जी, मौजा सदूं में करतार चन्द के नाम के स्थान पर करतार सिंह, निवासी महाल खज्जी, मौजा सदूं, तहसील बड़ोह, जिला कांगडा (हि0प्र0) के नाम दुरुस्ती करने बारे कोई उजर एतराज हो तो वह असालतन या वकालतन तारीख पेशी 24-07-2026 को 10.00 बजे इस अदालत में हाजिर होकर अपना उजर-एतराज पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाएगी और नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिये जाएंगे।

यह इशतहार आज दिनांक 25-06-2026 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ है।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील बड़ोह, जिला कांगडा (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, सुलह,
जिला कांगड़ा (हि0प्र0)**

मुकद्दमा नं० : / 2026

किस्म मुकद्दमा : नाम दुरुस्ती

तारीख पेशी : 04-08-2026

अनिल कुमार पुत्र सुरेश शर्मा पुत्र विध्याधर, निवासी महाल शमूला खास, डाकघर फरेड, तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

विषय.—नाम की दुरुस्ती बारे।

प्रार्थी अनिल कुमार पुत्र सुरेश शर्मा पुत्र विध्याधर, निवासी गांव शमूला खास, डाकघर फरेड, तहसील सुलह, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना—पत्र मय ब्यान हल्फी द्वारा सूचित किया है कि उसके पिता का असल नाम सुरेश शर्मा है और उनके आधार कार्ड व अन्य अभिलेख में भी इसी नाम से प्रविष्टि दर्ज है जबकि महाल जसूं के राजस्व अभिलेख में प्रार्थी के पिता का नाम शेष राम दर्ज कागजात माल है जोकि गलत है। अतः महाल जसूं के राजस्व अभिलेख में प्रार्थी के पिता के नाम की दुरुस्ती करके शेष राम के बजाए शेष राम उपनाम सुरेश शर्मा करने उपरान्त सही नाम दर्ज कागजात माल किया जाए।

अतः इस इशतहार राजपत्र हिमाचल प्रदेश के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त व्यक्ति के नाम की दुरुस्ती बारे किसी को कोई उजर व एतराज हो तो वह दिनांक 04-08-2026 को असालतन व वकालतन इस कार्यालय में हाजिर होकर उजर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 23-06-2026 को मेरे हस्ताक्षर व मोहर सहित जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
सुलह, जिला कांगड़ा (हि0प्र0)।

**ब अदालत श्री दीपक शर्मा, सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, फतेहपुर,
जिला कांगड़ा (हि0प्र0)**

शरीफ दीन पुत्र खजाना, निवासी गांव व डा0 जखाडा व तहसील फतेहपुर, जिला कांगड़ा (हि0प्र0)
प्रार्थी।

बनाम

आम जनता

फ्रीकदोयम।

प्रार्थना—पत्र बाबत नाम दुरुस्ती जेर धारा 37(2) (हि0प्र0) भू—राजस्व अधिनियम, 1954.

शरीफ दीन पुत्र खजाना, निवासी गांव व डा0 जखाडा व तहसील फतेहपुर, जिला कांगड़ा (हि0प्र0) ने अदालत हजा में एक प्रार्थना—पत्र बाबत नाम दुरुस्ती हेतु गुजारा है कि प्रार्थी का नाम महाल जखाडा खास के राजस्व रिकार्ड में शरीफ मुहम्मद दर्ज है परन्तु प्रार्थी के आधार कार्ड व पंचायत रिकार्ड में उनका नाम शरीफ दीन दर्ज है। प्रार्थना—पत्र के अनुसार शरीफ मुहम्मद व शरीफ दीन दोनों एक ही व्यक्ति के नाम हैं। अतः प्रार्थी महाल जखाडा खास के राजस्व कागजात में शरीफ मुहम्मद उर्फ शरीफ दीन दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थी के नाम को महाल हजा में दुरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 23-07-2026 को प्रातः 10.00 बजे असालतन व वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करे। अन्यथा प्रार्थी का नाम महाल जखाडा खास के राजस्व रिकार्ड में शरीफ मुहम्मद उर्फ शरीफ दीन दुरुस्त दर्ज करने बारे आदेश पारित कर दिए जाएंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समायत न होगा।

मोहश्र।

हस्ताक्षरित /—
समाहर्ता प्रथम श्रेणी एवं तहसीलदार फतेहपुर,
जिला कांगड़ा (हि0प्र0)।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील पंचरुखी, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : 07/TEH/2026

तारीख पेशी : 22-07-2026

श्री विपन चन्द्र पुत्र श्री किरपा राम, निवासी गांव व डा0 सल्याणा, तहसील पंचरुखी, जिला कांगड़ा हि0प्र0।

बनाम

आम जनता/ग्राम पंचायत सल्याणा

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

श्री विपन चन्द्र पुत्र श्री किरपा राम, निवासी गांव व डा0 सल्याणा, तहसील पंचरुखी, जिला कांगड़ा हि0प्र0 ने इस कार्यालय में प्रार्थना-पत्र पेश किया है कि इनका जन्म गांव व डा0 सल्याणा में दिनांक 15-03-1966 को हुआ है। लेकिन ग्राम पंचायत सल्याणा के अभिलेख में दर्ज न है।

अतः अब इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि इस बारे किसी व्यक्ति को कोई उजर एवं एतराज हो तो वह दिनांक 22-07-2026 को अधोहस्ताक्षरी की अदालत में प्रातः 11.00 बजे हाजिर होकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर या एतराज काबिले समायत न होगा तथा विपन चन्द्र के जन्म पंजीकरण के आदेश ग्राम पंचायत सल्याणा को पारित कर दिए जाएंगे।

आज दिनांक 24-06-2026 को हमारे हस्ताक्षर व मोहर सहित जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पंचरुखी, जिला कांगड़ा (हि0प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, थुरल, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : 813029/2026

किस्म प्रकरण : जन्म पंजीकरण

तारीख पेशी : 22-07-2026

श्रीमती गीता देवी पुत्री श्री विधी चन्द, निवासी गांव सेदू, तहसील थुरल, ग्राम पंचायत थुरल खास, जिला कांगड़ा (हि0प्र0) प्रार्थिया।

आम जनता

प्रतिवादी।

विषय.—जन्म व मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13(3) के तहत जन्म पंजीकरण हेतु प्रार्थना-पत्र।

इशतहार अखबारी व मुशत्री मुनादी।

श्रीमती गीता देवी पुत्री श्री विधी चन्द, निवासी गांव सेदू, डा0 सेदू, तहसील थुरल, ग्राम पंचायत थुरल खास, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना-पत्र मय ब्यान हल्फी पेश करते हुए आवेदन किया है कि उसका जन्म दिनांक 18-07-1952 को गांव सेदू, डा0 सेदू, तहसील थुरल, ग्राम पंचायत थुरल खास में हुआ है, परन्तु अज्ञानतावश उसके जन्म का पंजीकरण स्थानीय ग्राम पंचायत अभिलेख में न करवाया गया है। अतः प्रार्थिया इस न्यायालय के माध्यम से अपने जन्म का पंजीकरण करने के आदेश ग्राम पंचायत थुरल खास को जारी करवाना चाहती है।

अतः प्रार्थिया का आवेदन स्वीकार करते हुए, इस इशतहार मुशत्री मुनादी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति या संस्था को उपरोक्त की जन्म तिथि 18-07-1952 के पंजीकरण बारे कोई उजर एवं एतराज हो तो असालतन या वकालतन तारीख पेशी 22-07-2026 को हाजिर अदालत होकर अपना उजर व एतराज पेश कर सकता है। बाद तारीख पेशी किसी किस्म का उजर एवं एतराज नहीं सुना जावेगा व उपरोक्त श्रीमती गीता देवी की जन्म तिथि को पंजीकृत करने के आदेश उप-स्थानीय पंजीकार, जन्म व मृत्यु, ग्राम पंचायत थुरल खास को पारित कर दिए जाएंगे।

यह इशतहार मेरे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-06-2026 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी
थुरल, जिला कांगड़ा (हि0प्र0)।

ब अदालत तहसीलदार एव कार्यकारी दण्डाधिकारी, थुरल, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : 710178/26

तारीख पेशी : 23-07-2026

श्री विनय पटियाल पुत्र श्री जोगिन्दर सिंह, निवासी गांव कोटलू, डाकघर पपलाह, उप-तहसील आलमपुर, जिला कांगड़ा (हि0प्र0) प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

विषय.—जन्म व मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13(3) के तहत मृत्यु पंजीकरण हेतु प्रार्थना-पत्र।

इशतहार अखबारी व मुशत्री मुनादी।

श्री विनय पटियाल पुत्र श्री जोगिन्दर सिंह, निवासी गांव कोटलू, डाकघर पपलाह, उप-तहसील आलमपुर, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना-पत्र मय ब्यान हल्फी पेश किया व आवेदन किया कि उसकी आंटी Aunty स्व0 श्रीमती नन्दा देवी पत्नी स्व0 श्री रतन चन्द का देहांत दिनांक 24-12-1995 को गांव थुरल खास, डा0 थुरल, जिला कांगड़ा, हिमाचल प्रदेश में हुआ है, परन्तु अज्ञानतावश उसकी आंटी Aunty की मृत्यु का पंजीकरण ग्राम पंचायत अभिलेख में दर्ज न करवाया गया है। अतः प्रार्थी इस न्यायालय

के माध्यम से अपनी आंटी Aunty की मृत्यु का पंजीकरण करने के आदेश ग्राम पंचायत थुरल कांठा सुभां को जारी करवाना चाहता है।

अतः प्रार्थी का आवेदन स्वीकार करते हुए, इस इशतहार मुश्री मुनादी व चस्पांगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति या संस्था को उपरोक्त दिवंगत श्रीमती नन्दा देवी पत्नी स्व० श्री रतन चन्द की मृत्यु तिथि 24-12-1995 के पंजीकरण बारे कोई उजर एवं एतराज हो तो असालतन या वकालतन तारीख पेशी 23-07-2026 को हाजिर अदालत होकर अपना उजर व एतराज पेश कर सकता है। बाद तारीख पेशी किसी किस्म का उजर एवं एतराज नहीं सुना जावेगा व उपरोक्त श्रीमती नन्दा देवी पत्नी स्व० श्री रतन चन्द की मृत्यु का पंजीकरण करने के आदेश उप-स्थानीय पंजीकार, जन्म व मृत्यु, ग्राम पंचायत थुरल कांठा सुभां को पारित कर दिए जाएंगे।

यह इशतहार मेरे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-06-2025 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी
थुरल, जिला कांगड़ा (हि०प्र०)।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसीलदार, जयसिंहपुर,
जिला कांगड़ा (हि०प्र०)**

मुकद्दमा नं० : 75/तह०/2024

पेशी दिनांक : 20-07-2026

अमर सिंह बनाम सुभाष चन्द व अन्य

विषय.—तकसीम भूमि खाता नम्बर 165, खतौनी नम्बर 223, खसरा नम्बर 1617, 1620, 1623 रकबा तादादी 0-71-19 हैक्टयर, वाक्या महाल, हरोट, मौजा व तहसील जयसिंहपुर, जिला कांगड़ा (हि०प्र०) जमाबन्दी वर्ष 2018-19।

मुश्री मुनादी बनाम :-1. सुभाष चन्द पुत्र प्रेम चन्द, 2. वैनी चन्द पुत्र नीरू, 3. ब्रह्मी देवी पुत्री नीरू, 4. प्यार चन्द पुत्र लीम्वडू, 5. सुरेश पुत्र लीम्वडू, 6. वीना देवी पुत्री लीम्वडू, 7. संजना देवी पुत्री लीम्वडू, 8. सुमन पुत्री लीम्वडू, 9. विद्या देवी पुत्री लीम्वडू, 10. छांटाकी देवी पुत्री कनाकडू, 11. दुनी चन्द पुत्र खजाना मृतक वारसान a. सोमा देवी विधवा दुनी चन्द, b. सरवण कुमार पुत्र दुनी चन्द, c. बुधि सिंह d. रेसमा पुत्री दुनी चन्द, 12. प्रेम सिंह पुत्र खजाना मृतक a. पुष्पा देवी विधवा प्रेम सिंह, b. अर्जुन कुमार पुत्र प्रेम सिंह, c. भीम सिंह पुत्र प्रेम सिंह, d. शकुन्तला देवी पुत्री प्रेम सिंह, e. आशा कुमारी पुत्री प्रेम सिंह, 13. श्रीमती सत्या देवी पुत्री खजाना मृतक a. रविन्द्र कुमार पुत्र सत्या देवी विधवा खजाना, b. जोगिन्द्र कुमार पुत्र सत्या देवी, 14. सवित्री देवी पुत्री खजाना, 15. श्रीमती जाशोधा विधवा खजाना मृतक वारसान से पहले प्रतिवादी नं० 11 और 13 नम्बर पर, 16. प्रितम पुत्र मन्जूर, 17. जसवनत पुत्र नन्थु, 18. जोगिन्द्र पुत्र नन्थु, 19. कुलदीप पुत्र नन्थु, 20. राजेश कुमार पुत्र नन्थु, 21. जुगल किशोर पुत्र नन्थु, 22. कुको पुत्री नन्थु, मृतक a. रणजीत सिंह पुत्र कुको, b. रणवीर सिंह पुत्र कुको, c. सुमना देवी पुत्री कुको, d. सुषमा देवी पुत्री कुको, 23. श्रीमती माया देवी पुत्री नन्थु, 24. शम्भू पुत्र सुखिया मृतक वारसान a. वलवीर सिंह पुत्र शम्भू, b. कुलवन्त सिंह पुत्र शम्भू, c. निशान देवी पुत्री शम्भू, d. मेरा देवी पुत्री शम्भू, 25. भोली पुत्री सुखिया मृतक a. किशोरी पुत्र भोली, 26. सामता पुत्री सुखिया मृतक a. प्रशोतम चन्द पुत्र सामता, b. गुरवचन पुत्र सामता, 27. श्रीमती धनी देवी पुत्री सुखिया मृतक a. तारा चन्द पुत्र धनी देवी, b. मदन लाल पुत्र धनी देवी, c. सुदेश कुमार पुत्र धनी देवी, d. सुदेश कुमार पुत्र धनी देवी, 28. जानकी देवी पुत्री सुखिया, 29. राजिन्द्र कुमार पुत्र प्रेम सिंह, 30. नीलूम कुमारी पुत्री प्रेम सिंह, 31. मोनिका कुमारी पुत्री प्रेम सिंह, 32. प्रयिन्का कुमारी पुत्री प्रेम सिंह, 33. पवना देवी पुत्री प्रेम सिंह, 34. कौशल्या देवी पुत्री प्रेम सिंह, 35. गायत्री देवी पुत्री प्रेम सिंह, 36. हरनाम सिंह पुत्र नीरू राम, 37. ओम प्रकाश पुत्र संन्जु, 38. मलकियत देवी पुत्री संन्जु, 39. ईशवर दास पुत्र संन्जु, 40. लोटन देवी पुत्री कुको, 41. पीन्की देवी पुत्री कुको, 42. श्रीमती मलापा देवी पुत्री कुको मृतक वारसन a. लोटन देवी पुत्री

मलापा, b. पीन्की देवी पुत्री मलापा, 43. श्रीमती गुडडों देवी पुत्री कुको मृतक वारसान a. टुहक देवी पुत्री गुडडों देवी पुत्री कुको, 44. प्रकाश चन्द पुत्र कुको, 45. वंक्षी चन्द पुत्र प्रशिन्दा, 46. झाण्डा पुत्र प्रशिन्दा, 47. मेहर सिंह पुत्र प्रशिन्दा, 48. इलम चन्द पुत्र प्रशिन्दा, 49. पंचम चन्द पुत्र प्रशिन्दा, 50. व्यासां देवी पुत्री प्रशिन्दा, 51. कुलदीप सिंह पुत्र प्रभदयाल, 52. मिलाप चन्द पुत्र प्रभदयाल, 53. लता देवी पुत्री प्रभदयाल, 54. कमलेश कुमारी पुत्री प्रभदयाल, 55. रन्चों देवी पुत्री प्रभदयाल, 56. धन्जुं पुत्री घरीन्डू, 57. निक्कु राम पुत्र मनी, 58. राज कुमार पुत्र प्रमोद सिंह, 59. राकेश कुमार पुत्र प्रमोद सिंह, 60. रवि कुमार पुत्र प्रमोद सिंह, 61. अंजना कुमारी पुत्री प्रमोद सिंह, 62. विद्या देवी विधवा प्रमोद सिंह, 63. अनिल कुमार पुत्र होशियार सिंह, 64. सुनील कुमार पुत्र होशियार सिंह, 65. मंजू देवी पुत्री होशियार सिंह, 66. निर्मला देवी विधवा होशियार सिंह, 67. ईशवर दास पुत्र मसेडू, 68. इन्दरू पुत्र किहरू, 69. व्यासां देवी विधवा किहरू, 70. धनी राम पुत्र रंगीलू मृतक वारसान a. किरन कुमार पुत्र धनी राम, b. संजय कुमार पुत्र धनी राम, 71. मिलाप चन्द पुत्र रंगीलू, 72. शशि पाल पुत्र रतन चन्द, 73. दया देवी पुत्री रतन चन्द, 74. मीरा देवी पुत्री रतन चन्द, 75. रंजनी देवी पुत्री रतन चन्द, 76. ब्रह्मी देवी विधवा रतन चन्द, 77. ब्रतू उपनाम वरिन्द्र सिंह पुत्र रंगीलू महाल हरोट तहसील जयसिंहपुर, जिला कांगड़ा, हि0प्र0।

उपरोक्त मुकद्दमा में प्रतिवादियों को बार-बार समन जारी किये जा चुके हैं परन्तु इनकी तामील साधारण तरीके से नहीं हो रही है। ऐसा प्रतीत होता है कि उपरोक्त प्रतिवादी इस तकसीम के सम्बन्ध में रुचि नहीं ले रहे हैं।

अतः इस मुश्त्री मुनादी द्वारा सूचित किया जाता है कि यदि किसी भी प्रतिवादीगण व स्थानीय वाशिंदगान को इस सम्बन्ध में कोई उजर व एतराज हो तो वह दिनांक 20-07-2026 को दोपहर 02.00 बजे इस अदालत में असागतन या वकालतन हाजिर आकर पैरवी कर सकता है हाजिर न आने की सूरत में नियमानुसार कार्यवाही अमल में लाई जायेगी।

आज दिनांक 04-06-2026 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
तहसील जयसिंहपुर, जिला कांगड़ा (हि0प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, द्वितीय श्रेणी, तहसील धर्मपुर,
जिला मण्डी (हि0प्र0)

मिसल नं० : 08/2026

तारीख मजरूआ : 24-06-2026

तारीख फैसला : 25-07-2026

मुकद्दमा शीर्षक श्री सरवण कुमार पुत्र श्री सन्त राम, निवासी बनाल, डा0 बरोटी, तहसील धर्मपुर, जिला मण्डी (हि0प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

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

श्री सरवण कुमार पुत्र श्री सन्त राम, निवासी बनाल, डा0 बरोटी, तहसील धर्मपुर, जिला मण्डी (हि0प्र0) ने एक प्रार्थना-पत्र मय Addl-District Registrar Birth & Death Mandi का पत्र ब्यान हल्फी व अप्राप्यता प्रमाण-पत्र स्थानीय पंजीयक/नकल परिवार रजिस्टर प्रस्तुत है के अनुसार प्रार्थी की जन्म तिथि 01-07-1955 दर्ज है जो सही है लेकिन ग्राम पंचायत बनाल के रिकार्ड में दर्ज नहीं है अब प्रार्थी अपनी जन्म तिथि 01-07-1955 सम्बन्धित ग्राम पंचायत में दर्ज करवाना चाहता है।

अतः इस इशतहार द्वारा सर्वसाधारण जनता को सूचित किया जाता है कि उपरोक्त जन्म तिथि 01-07-1955 दर्ज करने बारे यदि किसी का उजर/एतराज हो तो असालतन या वकालतन दिनांक 25-07-2026 को प्रातः 10.00 बजे या इससे पूर्व इस अदालत में उपस्थित होकर अपना उजर/एतराज पेश कर सकता है। अन्यथा अनुपस्थिति की अवस्था में यह समझा जायेगा कि किसी को कोई एतराज नहीं है इस स्थिति पर एकतरफा आदेश पारित कर दिए जाएंगे।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
धर्मपुर, जिला मण्डी (हि0प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप-तहसील टिक्कन,
जिला मण्डी (हि0प्र0)

मिसल नं० : 808134/2026

मजरूआ : 20-06-2026

तारीख पेशी : 20-07-2026

श्रीमती संगीता पुत्री श्री चुहडु उर्फ राज कुमार, निवासी खलैहल, डा0 बरोट, उप-तहसील टिक्कन, जिला मण्डी (हि0प्र0)।

बनाम

आम जनता

विषय.— बावत इन्द्राज जन्म तिथि अधीन जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969।

उपरोक्त विषय से सम्बन्धित मुकद्दमा इस अदालत में विचाराधीन है जिसमें उपरोक्त प्रार्थिया श्रीमती संगीता ने दावा किया है कि उनका जन्म दिनांक 11-05-2002 को गांव खलैहल, डा0 बरोट, उप-तहसील टिक्कन, जिला मण्डी में हुआ है जिसका जन्म पंजीकरण ईलम न होने के कारण ग्राम पंचायत बरोट के परिवार रजिस्टर में दर्ज नहीं हुआ हैं, अब दर्ज किया जाये।

अतः इस इशतहार राजपत्र द्वारा आम जनता को सूचित किया जाता है कि प्रार्थिया की उपरोक्त जन्म तिथि को ग्राम पंचायत बरोट के अभिलेख में पंजीकरण बारे कोई उजर व एतराज हो तो वह दिनांक 20-07-2026 को दोपहर 12.30 बजे तक असालतन या वकालतन हाजिर आकर अपना उजर व एतराज पेश कर सकता है। हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी प्रकार का कोई भी दावा स्वीकार्य न होगा और नियमानुसार उपरोक्त जन्म तिथि दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 30-06-2026 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
उप-तहसील टिक्कन, जिला मण्डी (हि0प्र0)।

ब अदालत श्री अनिल शर्मा, तहसीलदार/कार्यकारी दण्डाधिकारी, तहसील ननखरी,
जिला शिमला, हिमाचल प्रदेश

श्रीमती दिशा पत्नी श्री अनील कुमार, निवासी गांव व डा0 खुन्नी, तहसील ननखरी, जिला शिमला, हिमाचल प्रदेश।

बनाम

आम जनता

उनवान मुकद्दमा.— ग्राम पंचायत खुन्नी पनाली के परिवार रजिस्टर में नाम दुरुस्त करने बारे प्रार्थना—पत्र।

श्रीमती दिशा पत्नी श्री अनील कुमार, निवासी गांव व डा0 खुन्नी, तहसील ननखरी, जिला शिमला, हिमाचल प्रदेश ने इस अदालत में प्रार्थना—पत्र मय शपथ पत्र गुजार कर निवेदन किया है कि उसका नाम पंचायत अभिलेख में संगीता दर्ज है जो कि सही नहीं है। प्रार्थिया का सही नाम दिशा है। प्रार्थिया अपना नाम संगीता के स्थान पर दिशा दर्ज करवाना चाहती है।

अतः इस इशतहार द्वारा आम जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त प्रार्थिया का नाम ग्राम पंचायत खुन्नी पनाली के अभिलेख में परिवर्तन करने बारे कोई एतराज हो तो दिनांक 24-07-2026 को सुबह 10.00 बजे या इससे पूर्व असालतन/वकालतन हाजिर होकर लिखित व मौखिक एतराज पेश करें अन्यथा उजर/एतराज पेश न होने की सूरत में पंचायत अभिलेख में प्रार्थिया का नाम परिवर्तन करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 25-06-2026 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—

(अनिल शर्मा),

तहसीलदार/कार्यकारी दण्डाधिकारी,
तहसील ननखरी, जिला शिमला (हि0प्र0)।

ब अदालत श्री नवीन कुमार, कार्यकारी दण्डाधिकारी, रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)

मिसल नं0 : 11/2026

तारीख पेशी : 28-07-2026

श्री कल्याण सिंह पुत्र श्री कॉशीराम, निवासी संगड़ाह, डाकघर संगड़ाह, ग्राम पंचायत संगड़ाह, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0)।

बनाम

आम जनता

विषय.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969।

इशतहार जन्म एवं मृत्यु पंजीकरण।

उसरोक्त प्रार्थना—पत्र श्री कल्याण सिंह पुत्र श्री कॉशीराम, निवासी संगड़ाह, डाकघर संगड़ाह, ग्राम पंचायत संगड़ाह, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0) ने अधिन धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके प्रार्थना की है कि प्रार्थी की जन्म तिथि 1-7-1968 है, जोकि ग्राम पंचायत संगड़ाह, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0) के जन्म एवं मृत्यु पंजीकरण रजिस्टर में दर्ज नहीं है, जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्व साधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 28-07-2026 को प्रातः 10.00

बजे हमारी अदालत में उपस्थित होकर उजर/एतराज प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई उजर काबिले गौर न होगा तथा प्रार्थी की जन्म तिथि 1-7-1968 ग्राम पंचायत संगड़ाह में दर्ज करने के आदेश जारी कर दिये जाएंगे।

आज दिनांक 20-06-2026 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)।

**Before Sh. Ram Bhaj Sharma, Executive Magistrate-cum Naib Tehsildar,
Majra, District Sirmaur, Himachal Pradesh**

Case No.	Date of Institution	Date of Decision
24/2026	08-06-2026	Pending for : 13-07-2026

Sh. Jaswant Singh Son of Late Sh. Jit Singh, r/o Village Sudanwala, P.O. Dhaulakuan, Tehsil Paonta Sahib, Distt. Sirmaur (H.P.)
. .Applicant.

Versus

General Public
. .Respondents.

Application under section 13(3) of birth and death Registration Act, 1969.

Sh. Jaswant Singh Son of Late Sh. Jit Singh, r/o Village Sudanwala, P.O. Dhaulakuan, Tehsil Paonta Sahib, Distt. Sirmaur (H.P.) has moved an application before the undersigned under section 13(3) of Birth and Death Registration Act, 1969 alongwith affidavits and other documents stating therein that his birth on 06-10-1973 at Village Sudanwala, P.O. Dhaulakuan, Tehsil Paonta Sahib, Distt. Sirmaur (H.P.) but his date of birth could not be registered in the records of Gram Panchayat Dhaulakuan, Sub-Tehsil Majra, District Sirmaur (H.P.) within stipulated period.

Hence, he prayed for passing necessary orders to the Secretary, Births & Deaths Registration, Gram Panchayat Dhaulakuan, Sub-Tehsil Majra for entering the same in the births and deaths records.

Therefore, by this proclamation the general public is hereby informed that any person having any objections for the registration of delayed date of birth of Sh. Jaswant Singh Son of Sh. Jit Singh and smt. Narati Devi, may submit their objections in writing in this court on or before 13-07-2026 at 10.00 A.M., failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 12th day of June, 2026.

Seal.

Sd/-
(RAM BHAI SHARMA),
Executive Magistrate-cum-(Naib Tehsildar),
Majra, District Sirmaur (H.P.).

**समक्ष श्री जय सिंह ठाकुर, कार्यकारी दण्डाधिकारी, तहसील ददाहू,
जिला सिरमौर, हिमाचल प्रदेश**

मिसल नं० : 15/13 (3) of 2026

तारीख मजरुआ : 18-05-2026

तारीख पेशी : 10-07-2026

प्रार्थी श्री भाग चन्द पुत्र श्री किरपा राम, निवासी स्वार, पो.ओ. नेहर स्वार, तहसील ददाहू, जिला सिरमौर (हि०प्र०)।

बनाम

आम जनता

दरखास्त बरुये जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 जेरे धारा 13(3)।

प्रार्थी/वादी श्री भाग चन्द पुत्र श्री किरपा राम, निवासी स्वार, पो. ओ. नेहर स्वार, तहसील ददाहू, जिला सिरमौर (हि०प्र०) ने अदालत हजा में एक दरखास्त गुजार कर दावा किया है कि प्रार्थी अपना नाम व जन्म तिथि ग्राम पंचायत नेहर स्वार में दर्ज करवाना चाहता है। प्रार्थी का जन्म मिति 13-07-1968 को ग्राम पंचायत नेहर स्वार में हुआ था, लेकिन वह किसी कारण आज तक अपना जन्म ग्राम पंचायत नेहर स्वार में दर्ज न करवा सका, जिसे नियमानुसार दर्ज किया जाना उचित व आवश्यक है।

जन्म दर्ज के मौजूदा मामले में प्रार्थी के उपरोक्त दावों के संदर्भ में प्रार्थी के सभी सगे-सम्बन्धियों एवं आम जनता को इस इशतहार के माध्यम से सूचित किया जाता है कि उक्त मामले में किसी भी प्रकार की आपत्ति व एतराज दर्ज करने बारे दिनांक 10-07-2026 को कार्यकारी दण्डाधिकारी के समक्ष असालतन या वकालतन पेश हों। अन्यथा मामले में एकतरफा कार्यवाही अमल में लाई जायेगी।

आज दिनांक 22-05-2026 को मेरे हस्ताक्षर एवं मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—

(जय सिंह ठाकुर)

कार्यकारी दण्डाधिकारी,

तहसील ददाहू, जिला सिरमौर (हि०प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी (नायब तहसीलदार), नाहन, जिला सिरमौर (हि०प्र०)

श्री अब्दूल पुत्र श्री फिरोज खान, निवासी गांव क्यारी, डा० चाकली, ग्राम पंचायत क्यारी, नाहन जिला सिरमौर (हि०प्र०)।

बनाम

आम जनता

प्रार्थी श्री अब्दूल पुत्र श्री फिरोज खान, निवासी गांव क्यारी, डा० चाकली, ग्राम पंचायत क्यारी, नाहन जिला सिरमौर (हि०प्र०) ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत एक आवेदन जिला रजिस्ट्रार (जन्म एवं मृत्यु)/मुख्य चिकित्सा अधिकारी, जिला सिरमौर स्थित नाहन के पत्र क्रमांक HFW-N/ST/B&D/Delayed Cases/2026-1897, दिनांक 22-05-2026 अनुलग्न क्रमशः अपना ब्यान हल्फी, आधार कार्ड, दो गवाहन के ब्यान हल्फी, अनुपलब्धता प्रमाण-पत्र रजिस्ट्रार जन्म एवं मृत्यु ग्राम पंचायत क्यारी, तहसील नाहन, जिला सिरमौर, हि०प्र०, प्रति रिपोर्ट आंगनबाडी क्यारी, प्रति परिवार रजिस्ट्रार अन्य आवश्यक कागजात सहित मामले में पूर्ण छानबीन उपरान्त इस अदालत में प्राप्त हुआ है, जिसमें प्रार्थी ने

आवेदन किया है कि उसके बेटे जुनस की जन्म तिथि 31-01-2025 है, जिसे वह और उसका परिवार अज्ञानतावश अपनी ग्राम पंचायत क्यारी, में दर्ज न करवा सके। अब वह अपने बेटे जुनस की जन्म तिथि उक्त ग्राम पंचायत क्यारी, तहसील नाहन, जिला सिरमौर (हि0प्र0) में दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इश्तहार/नोटिस द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा दिनांक 23-07-2026 को प्रातः 10.00 बजे अदालत में हाजिर होकर अपना एतराज प्रस्तुत कर सकता है। अगर उक्त तारीख तक किसी का उजर/एतराज प्राप्त नहीं होता तो श्री अब्दूल एवं श्रीमती रोशनी के पुत्र जुनस की जन्म तिथि 31-01-2025 ग्राम पंचायत क्यारी, तहसील नाहन, जिला सिरमौर हि0प्र0 में दर्ज करने के आदेश जारी कर दिये जावेंगे।

आज दिनांक 23-06-2026 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी (नायब तहसीलदार),
नाहन, जिला सिरमौर (हि0प्र0)।

**ब अदालत श्री नवीन कुमार सहायक समाहर्ता द्वितीय श्रेणी, रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)**

मिसल नं० : 802828/2026

तारीख पेशी : 28-07-2026

श्री जय सिंह पुत्र श्री सूरत सिंह पुत्र मौजी, निवासी जबड़ोग, पो0ओ0 अंधेरी, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0)।

बनाम

आम जनता

विषय.—दरखास्त सेहत नाम वाका मौजा रन्फुआ जबड़ोग पटवार वृत्त अंधेरी, तहसील रेणुका जी, जिला सिरमौर (हि0प्र0)

मुकद्दमा उपरोक्त अदालत हजा में विचारधीन है, जिसमें प्रार्थी प्रार्थना—पुत्र श्री जय सिंह पुत्र श्री सूरत सिंह पुत्र मौजी, निवासी जबड़ोग, पो0ओ0 अंधेरी, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0) ने दरखास्त गुजारी है, जिसके अनुसार उसका सही नाम जय सिंह पुत्र श्री सूरत सिंह है तथा प्रार्थी ने अपना तमाम रिकार्ड परिवार नकल, आधार कार्ड, पैन कार्ड, राशन कार्ड, नकल जमाबंदी पेश किया है, जिसमें प्रार्थी का नाम जय सिंह है परन्तु राजस्व रिकार्ड मौजा जबड़ोग पटवार वृत्त अंधेरी में सायल का नाम जयराम पुत्र सूरत पुत्र मौजी दर्ज चला आ रहा है जो कि गलत है तथा जिसको वह मौजा जबड़ोग के राजस्व रिकार्ड में दुरुस्त करवाना चाहता है।

अतः सर्व साधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 28-07-2026 प्रातः 10.00 बजे हमारी अदालत में उपस्थित होकर उजर/एतराज प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई उजर काबिले गौर न होगा तथा प्रार्थी का सही नाम श्री जय सिंह पुत्र श्री सूरत सिंह पुत्र मौजी, मौजा जबड़ोग में दर्ज करने के आदेश जारी कर दिये जाएंगे।

आज दिनांक 20-06-2026 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)।

**ब अदालत श्री नवीन कुमार सहायक समाहर्ता द्वितीय श्रेणी, रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)**

मिसल नं० : 802831/2026

तारीख पेशी : 28-07-2026

श्री सत्यापाल शर्मा पुत्र श्री परमानन्द पुत्र तुलसीराम, निवासी कालथ, पो0ओ0 रजाना, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0)।

बनाम

आम जनता

विषय.—दरखास्त सेहत नाम वाका मौजा रजाना पटवार वृत्त रजाना, तहसील रेणुका जी, जिला सिरमौर (हि0प्र0)

मुकद्दमा उपरोक्त अदालत हजा में विचारधीन है, जिसमें प्रार्थी प्रार्थना—पुत्र श्री सत्यापाल शर्मा पुत्र श्री परमानन्द पुत्र तुलसीराम, निवासी कालथ, पो0ओ0 रजाना, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0) ने दरखास्त गुजारी है, जिसके अनुसार उसका सही नाम सत्यापाल शर्मा पुत्र श्री परमानन्द है तथा प्रार्थी ने अपना तमाम रिकार्ड परिवार नकल, आधार कार्ड, पैन कार्ड, 10th मार्क शीट, शजरा नस्ब, नकल जमाबंदी पेश किया है, जिसमें प्रार्थी का नाम सत्यापाल शर्मा है परन्तु राजस्व रिकार्ड मौजा रजाना पटवार वृत्त रजाना में सायल का नाम सतपाल पुत्र परमानन्द दर्ज चला आ रहा है, जो कि गलत है, जिसको वह मौजा रजाना के राजस्व रिकार्ड में दुरुस्त करवाना चाहता है।

अतः सर्व साधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 28-07-2026 प्रातः 10.00 बजे हमारी अदालत में उपस्थित होकर उजर/एतराज प्रस्तुत कर सकता है बाद गुजरने मियाद कोई उजर काबिले गौर न होगा तथा प्रार्थी का सही नाम श्री सत्यापाल शर्मा पुत्र श्री परमानन्द, पुत्र तुलसीराम मौजा रजाना में दर्ज करने के आदेश जारी कर दिये जाएंगे।

आज दिनांक 19-06-2026 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)।

**ब अदालत श्री नवीन कुमार सहायक समाहर्ता द्वितीय श्रेणी, रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)**

मिसल नं० : 802832/2026

तारीख पेशी : 28-07-2026

श्री सत्यापाल शर्मा पुत्र श्री परमानन्द पुत्र तुलसीराम, निवासी कालथ, पो0ओ0 रजाना, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0)।

बनाम

आम जनता

विषय.—दरखास्त सेहत नाम वाका मौजा ढाल पलयारा पटवार वृत्त काकोग, तहसील रेणुका जी, जिला सिरमौर (हि0प्र0)

मुकद्दमा उपरोक्त अदालत हजा में विचारधीन है जिसमें प्रार्थी प्रार्थना-पत्र श्री सत्यापाल शर्मा पुत्र श्री परमानन्द पुत्र तुलसीराम, निवासी कालथ, पो0ओ0 रजाना, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0) ने दरखास्त गुजारी है जिसके अनुसार उसका सही नाम सत्यापाल शर्मा पुत्र श्री परमानन्द है तथा प्रार्थी ने अपना तमाम रिकार्ड परिवार नकल, आधार कार्ड, पैन कार्ड, 10th मार्क शीट, शजरा नस्ब, नकल जमाबंदी पेश किया है, जिसमें प्रार्थी का नाम सत्यापाल शर्मा है परन्तु राजस्व रिकार्ड मौजा ढाल पलयारा पटवार वृत्त काकोग में सायल का नाम सतपाल पुत्र परमानन्द दर्ज चला आ रहा है, जो कि गलत है तथा जिसको वह मौजा ढाल पलयारा के राजस्व रिकार्ड में दुरुस्त करवाना चाहता है।

अतः सर्व साधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 28-07-2026 प्रातः 10.00 बजे हमारी अदालत में उपस्थित होकर उजर/एतराज प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई उजर काबिले गौर न होगा तथा प्रार्थी का सही नाम श्री सत्यापाल शर्मा पुत्र श्री परमानन्द, पुत्र तुलसीराम मौजा ढाल पलयारा में दर्ज करने के आदेश जारी कर दिये जाएंगे।

आज दिनांक 20-06-2026 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)।

ब अदालत श्री नवीन कुमार, सहायक समाहर्ता द्वितीय श्रेणी, रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)

मिसल नं0 : 802829/2026

तारीख पेशी : 28-07-2026

श्री हरिया राम पुत्र श्री लोदर पुत्र भूकिया, निवासी लुधियाना, पो0ओ0 अंधेरी, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0)।

बनाम

आम जनता

विषय.—दरखास्त सेहत नाम वाका मौजा लुधियाना पटवार वृत्त लुधियाना, तहसील रेणुका जी, जिला सिरमौर (हि0प्र0)।

मुकद्दमा उपरोक्त अदालत हजा में विचारधीन है, जिसमें प्रार्थी प्रार्थना-पत्र श्री हरिया राम पुत्र श्री लोदर पुत्र भूकिया, निवासी लुधियाना, पो0ओ0 अंधेरी, तहसील रेणुकाजी स्थित संगड़ाह, जिला सिरमौर (हि0प्र0) ने दरखास्त गुजारी है जिसके अनुसार उसका सही नाम हरिया राम पुत्र श्री लोदर है तथा प्रार्थी ने अपना तमाम रिकार्ड परिवार नकल, आधार कार्ड, पैन कार्ड, भारत निर्वाचन आयोग पहचान पत्र, नकल जमाबंदी पेश किया है, जिसमें प्रार्थी का नाम हरिया राम है परन्तु राजस्व रिकार्ड मौजा लुधियाना पटवार वृत्त लुधियाना में सायल का नाम हरिराम पुत्र लोदर दर्ज चला आ रहा है, जो कि गलत है, जिसको वह मौजा लुधियाना के राजस्व रिकार्ड में दुरुस्त करवाना चाहता है।

अतः सर्व साधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 28-07-2026 प्रातः 10.00 बजे हमारी अदालत में उपस्थित होकर उजर/एतराज प्रस्तुत कर सकता है बाद गुजरने मियाद कोई उजर काबिले गौर न होगा तथा प्रार्थी का सही नाम श्री हरिया राम पुत्र श्री लोदर पुत्र भूकिया, मौजा लुधियाना में दर्ज करने के आदेश जारी कर दिये जाएंगे।

आज दिनांक 20-06-2026 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित / —
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील रेणुकाजी स्थित संगड़ाह,
जिला सिरमौर (हि0प्र0)।

CORRECTION OF NAME

I, Azad Singh s/o Sh. Harbans Singh, r/o Village Beh Ghurian, P.O. Dhameta, Tehsil Fatehpur, Distt. Kangra (H.P.) declare that my name is recorded as Azad in Aadhar Card, PAN Card, Birth Certificate and School Certificates. Whereas, my actual name is Azad Singh, the Surname as Singh is required to be added in the name in the Aadhar Card, PAN Card, Birth Certificate and School Certificates as Azad Singh instead of Azad.

AZAD SINGH
s/o Sh. Harbans Singh,
r/o Village Beh Ghurian, P.O. Dhameta,
Tehsil Fatehpur, Distt. Kangra (H.P.).

CHANGE OF NAME

I, Rakesh Kumar s/o Sh. Chaman Lal, r/o Village Bahri, P.O. Kot, Tehsil Dharampur, Distt. Mandi (H.P.) declare that I have changed my minor son's name from Saurav to Sourabh Thakur. He shall be known as Sourabh Thakur for all purposes in future. All concerned please note.

RAKESH KUMAR
s/o Sh. Chaman Lal,
r/o Village Bahri, P.O. Kot,
Tehsil Dharampur, Distt. Mandi (H.P.).

CHANGE OF NAME

I, Ashok Kumar s/o Sh. Jagdish Chand, r/o Village Bari Di Bhaun, P.O. Tipper, Tehsil Barsar, Distt. Hamirpur (H.P.) declare that I have changed my minor daughter's name from Sunidhi Sharma to Aradhya Sharma. She shall be known as Aradhya Sharma for all purposes in future. All concerned please note.

ASHOK KUMAR
s/o Sh. Jagdish Chand,
r/o Village Bari Di Bhaun, P.O. Tipper,
Tehsil Barsar, Distt. Hamirpur (H.P.).

CORRECTION OF NAME

I, Kuldeep Kumar (35 Years) s/o Sh. Mani Ram, r/o Village Pantehar, P.O. Bheth Jhikli, Tehsil Baijnath, Distt. Kangra (H.P.) declare that I have changed my name from Kuldeep to Kuldeep Kumar for all purposes. My mother's correct name is Masara Devi instead of Masa Devi. All concerned note it.

KULDEEP KUMAR
s/o Sh. Mani Ram,
r/o Village Pantehar, P.O. Bheth Jhikli,
Tehsil Baijnath, Distt. Kangra (H.P.).

CHANGE OF NAME

I, Biaso Devi w/o Sh. Harnam Singh, r/o Village Kotlu, P.O. Patta, Tehsil Bhoranj, Distt. Hamirpur (H.P.) declare that I have changed my name from Biasa Devi to Biaso Devi. I shall be known as Biaso Devi for all purposes in future. All concerned please note.

BIASO DEVI
w/o Sh. Harnam Singh,
r/o Village Kotlu, P.O. Patta,
Tehsil Bhoranj, Distt. Hamirpur (H.P.).

CORRECTION OF NAME

I, Vivek Kumar s/o Sh. Balbir Singh, r/o Village Rakrial, P.O. Jhanira, Tehsil Hamirpur, Distt. Hamirpur (H.P.) declare that in school record of my minor daughter Shagun Thakur, her mother's name is wrongly entered as Pooja Kumari. Whereas, her mother's correct name is Pooja Parmar. All concerned please note.

VIVEK KUMAR
s/o Sh. Balbir Singh,
r/o Village Rakrial, P.O. Jhanira,
Tehsil Hamirpur, Distt. Hamirpur (H.P.).

CHANGE OF NAME

I, Harshit Thakur s/o Sh. Rajender Singh, r/o Village Phandi Bodiwala, Distt. Sirmaur (H.P.) declare that I have changed my name from Arshit Thakur (Aadhar Card No. 5385 6094 0601) to Harshit Thakur due to variation in my name in my documents. All concerned please may note.

HARSHIT THAKUR
s/o Sh. Rajender Singh,
r/o Village Phandi Bodiwala,
Distt. Sirmaur (H.P.).

CHANGE OF NAME

I, Prema Devi d/o Sh. Kanshi Ram, r/o Village Pahnala, P.O. Karihar, Tehsil & Distt. Kullu (H.P.) declare that my name is wrongly entered as Premi Devi in my Aadhar Card. Now I intend to correct my name as Prema Devi in Aadhar Card. Concerned note it.

PREMA DEVI
d/o Sh. Kanshi Ram,
r/o Village Pahnala, P.O. Karihar,
Tehsil & Distt. Kullu (H.P.).

CHANGE OF NAME

I, Meena Devi w/o Sh. Khem Chand, r/o Vill. Jalpehar, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi (H.P.) declare that I have changed my name from Neena Devi to Meena Devi for all future purposes. All concerned please note it.

MEENA DEVI
w/o Sh. Khem Chand,
r/o Vill. Jalpehar, P.O. Jalpehar,
Tehsil Joginder Nagar, Distt. Mandi (H.P.).

CORRECTION OF NAME

I, Kumari Shalu Devi w/o Sh. Pankaj, Village Kolka, P.O. Dano Ghat, Tehsil Arki, Distt. Solan (H.P.) declare that in my Aadhar Card my name is wrongly entered as Shalu Devi. Whereas, my correct name is Kumari Shalu Devi as per all education & other documents. All concerned please note.

KUMARI SHALU DEVI
w/o Sh. Pankaj,
Village Kolka, P.O. Dano Ghat,
Tehsil Arki, Distt. Solan (H.P.).
