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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 22 जुलाई, 2026 / 31 आषाढ़, 1948

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171 002, the 9th July, 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.106/2024	Ringzin Dolma	The XEN, HPPWD, Kaza	10	02-06-2026
2.	Ref.107/2024	Thilley Ankit	The XEN, HPPWD, Kaza	10	02-06-2026
3.	Ref.108/2024	Chhering Chhukit	The XEN, HPPWD, Kaza	10	02-06-2026
4.	Ref.109/2024	Kalzang Dolma	The XEN, HPPWD, Kaza	10	02-06-2026
5.	Ref.110/2024	Chhering Chhodon	The XEN, HPPWD, Kaza	10	02-06-2026
6.	Ref.111/2024	Tenzin Lamo	The XEN, HPPWD, Kaza	10	02-06-2026
7.	Ref.112/2024	Kalzang Dolma	The XEN, HPPWD, Kaza	10	02-06-2026
8.	Ref.116/2024	Nawang Chhodon	The XEN, HPPWD, Kaza	10	02-06-2026
9.	Ref.117/2024	Dechen Chhomo	The XEN, HPPWD, Kaza	10	02-06-2026
10.	Ref.118/2024	Tanzin Sonam	The XEN, HPPWD, Kaza	10	02-06-2026
11.	Ref.119/2024	Palden Lundup	The XEN, HPPWD, Kaza	10	02-06-2026
12.	Ref.120/2024	Chhering Angdui	The XEN, HPPWD, Kaza	10	02-06-2026
13.	Ref.121/2024	Kesang Lakit	The XEN, HPPWD, Kaza	10	02-06-2026
14.	Ref.122/2024	Tenzin Chhoyyi	The XEN, HPPWD, Kaza	10	02-06-2026
15.	Ref.123/2024	Chhering Zangmo	The XEN, HPPWD, Kaza	10	02-06-2026
16.	Ref.124/2024	Tenzin Angmo	The XEN, HPPWD, Kaza	10	02-06-2026
17.	Ref.125/2024	Yeshe Dolma	The XEN, HPPWD, Kaza	10	02-06-2026
18.	Ref.126/2024	Chhering Gonpo	The XEN, HPPWD, Kaza	10	02-06-2026
19.	Ref.127/2024	Shashi	The XEN, HPPWD, Kaza	10	02-06-2026
20.	Ref.129/2024	Mentok Lache	The XEN, HPPWD, Kaza	10	02-06-2026
21.	Ref.130/2024	Kalzang Lakit	The XEN, HPPWD, Kaza	10	02-06-2026

By order,

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

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

Reference No. : 106 of 2024
Instituted on : 18-10-2024
Decided on : 02-06-2026

**Ringzin Dolma w/o Sh. Kunga Palzor, r/o Village Langcha, P.O. Hikkam, 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. Ringzin Dolma, w/o Sh. Kunga Palzor, 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 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 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 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 the date of 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 purpose 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 month 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 June, 2020 and continued as such till November, 2022. 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 allowed to work 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 2nd Day of June, 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. : 107 of 2024
Instituted on : 18-10-2024
Decided on : 02-06-2026**

**Thilley Ankit, d/o Sh. Tashi Chhering, 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 Ms. Thilley Ankit, d/o Sh. Tashi Chhering, r/o Village Langcha, P.O. Hikkam, Tehsil Spiti, District Lahaul & Spiti, H.P., during August, 2009 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 2009 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 to the petitioner 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 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 15 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 December, 2022 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 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 August, 2009 and she has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 30 days in the year 2009, 112 days in the year 2010, 60 days in the year 2011, 20 days in the year 2012, 54 days in the year 2013, 29 days in the year 2014, 57 days in the year 2015, 30 days in the year 2016, 28 days in the year 2018, 60 days in the year 2019, 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 August, 2009 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 August, 2009 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 August, 2009 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 August, 2009 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 30 days in the year 2009, 112 days in the year 2010, 60 days in the year 2011, 20 days in the year 2012, 54 days in the year 2013, 29 days in the year 2014, 57 days in the year 2015, 30 days in the year 2016, 28 days in the year 2018, 60 days in the year 2019, 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. 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 August, 2009 till November, 2022 and has completed more than 180 days in twelve calendar months preceding her 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.

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 August, 2009 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 2009 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 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 November for three years.

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 August, 2009 and had worked till 30.11.2022 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 November. 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 2nd Day of June, 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. : 108 of 2024
Instituted on : 18-10-2024
Decided on : 02-06-2026**

**Chhering Chhukit d/o Sh. Chhering Angrup, 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 Ms. Chhering Chhukit, d/o Sh. Chhering Angrup, r/o Village Langcha, P.O. Hikkam, Tehsil Spiti, District Lahaul & Spiti, H.P., during August, 2010 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 2010 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 to the petitioner 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 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 13 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 December, 2022 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 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 August, 2010 and she has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 28 days in the year 2010, 90 days in the year 2011, 51 days in the year 2012, 29 days in the year 2013, 29 days in the year 2014, 55 days in the year 2015, 60 days in the year 2016, 89 days in the year 2017, 61 days in the year 2018, 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 August, 2010 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 August, 2010 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 twelve calendar months preceding 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 come 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 01-12-2022. 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 August, 2010 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 August, 2020 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 28 days in the year 2010, 90 days in the year 2011, 51 days in the year 2012, 29 days in the year 2013, 29 days in the year 2014, 55 days in the year 2015, 60 days in the year 2016, 89 days in the year 2017, 61 days in the year 2018, 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. 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 August, 2010 till November, 2022 and has completed more than 180 days in twelve calendar months preceding her 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 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 August, 2010 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 2010 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 the months of November in three years i.e 2020 to 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer in the months of November in three years.

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 August, 2010 and continued with certain fictional breaks 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. 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 years. 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 Gaiinda 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.* 01-12-2022 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 2nd Day of June, 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. : 109 of 2024
Instituted on : 18-10-2024
Decided on : 02-06-2026

Kalzang Dolma w/o Sh. Chhering Tashi, 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 HP to give break in service to Smt. Kalzang Dolma, w/o Sh. Chhering Tashi, r/o VPO Rangrik, Tehsil Kaza, District Lahaul & Spiti, H.P., during June, 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 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 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 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 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 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 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 2nd Day of June, 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. : 110 of 2024
Instituted on : 18-10-2024
Decided on : 02-06-2026

Chhering Chhodon w/o Sh. Sonam Takpa, 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 HP to give break in service to Smt. Chhering Chhodon, w/o Sh. Sonam Takpa, 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 and she had worked for three months w.e.f. May, 2021 to July 2021.

Thereafter, the services of the petitioner were orally terminated but after some time her services were re-engaged and she was allowed to work *w.e.f.* May, 2022 to 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 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 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 till November, 2022 and has completed more than 180 working days in twelve calendar months before 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 come 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 Man-days 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 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 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 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 twelve calendar months 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 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 continuously, 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 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 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 2nd Day of June, 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. : 111 of 2024
Instituted on : 18-10-2024
Decided on : 02-06-2026

Tenzin Lamo w/o Sh. Lobzang Dorje, r/o VPO Rangrik, Tehsil Kaza, 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. Tenzin Lamo, w/o Sh. Lobzang Dorje, r/o VPO Rangrik, Tehsil Kaza, District Lahaul & Spiti, H.P., during August, 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.	: 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 August, 2021 and she has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 60 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 August, 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 August, 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 August, 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 Augsut, 2021 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 60 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 August, 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 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 August, 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 months 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, 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 August, 2021 & November, 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 Gaiinda 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 2nd Day of June, 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. : 112 of 2024
Instituted on : 18-10-2024
Decided on : 02-06-2026

**Kalzang Dolma w/o Sh. Dorje Chhering, 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, HP PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti HP to give break in service to Smt. Kalzang Dolma, w/o Sh. Dorje Chhering, 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 and had worked with the department for three months *i.e w.e.f.* May, 2021 to July, 2021. Thereafter her services were orally terminated by the respondent but after some time the services of petitioner were reengaged and she was allowed to work *w.e.f.* May, 2022 to 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 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 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 June, 2021 and she has worked continuously with the department till November, 2022. He

has volunteered that the petitioner had worked for 58 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 June, 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 June, 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 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, 2021 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, 2021 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 58 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 June, 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 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, 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 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 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 June, 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 of five 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 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 2nd Day of June, 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. : 116 of 2024
Instituted on : 21-10-2024
Decided on : 02-06-2026

Nawang Chhodon w/o Sh. Tashi Rabgey, r/o Village Langcha, P.O. Hikkam, 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. Nawang Chhodon w/o Sh. Tashi Rabgey, r/o Village Langcha, P.O. Hikkam, Tehsil Spiti, District Lahaul & Spiti, H.P., during October, 2012 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 2012 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 to the petitioner 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 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 11 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 December, 2022 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 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 October, 2012 and she has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 31 days in the year 2012, 29 days in the year 2013, 22 days in the year 2015, 29 days in the year 2016, 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 October, 2012 and since the date of her initial engagement as daily waged beldar, the petitioner had worked with the department 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 October, 2012 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 twelve calendar months from the date of his illegal 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 October, 2012 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 October, 2012 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 31 days in the year 2012, 29 days in the year 2013, 22 days in the year 2015, 29 days in the year 2016, 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. 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 October, 2012 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 nowhere disputed that the petitioner has worked with the respondent from the month of October, 2012 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 2012 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 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 for three years.

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 October, 2012 and she had continued as such till 30.11.2022 and thereafter her services were finally terminated. It has been the contention of the petitioner that the department has given intentional break in service. 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 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 *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 2nd Day of June, 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. : 117 of 2024
Instituted on : 21-10-2024
Decided on : 02-06-2026

Dechen Chhomo w/o Sh. Dawa Dorje, r/o V.P.O. Rangrik, 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 Smt. Dechen Chhomo, w/o Sh. Dawa Dorje, r/o VPO Rangrik, Tehsil Kaza, District Lahaul & Spiti, H.P., during June, 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 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 he 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 June, 2021 and she has worked continuously with the department till December, 2022. He has volunteered that the petitioner had worked for 58 days in the year 2021 and 245 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 June, 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 has 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 wages 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 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 June, 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 twelve calendar months preceding 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 come 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 continuously from June, 2021 till December, 2022 thereby completing more than 180 working days in calendar year 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 June, 2021 and thereafter continuously worked with the department till December, 2022. This witness has even volunteered that the petitioner has worked for 58 days in the year 2021 and 245 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, 2021 till December, 2022 and has completed more than 180 days in calendar year 2022 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 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 June, 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 November and December, 2022. There is no explanation with the respondent department qua the engagement of petitioner as daily waged beldar/ labourer for the months of November and 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 June, 2021 till August, 2021 where after she was again reengaged in the month of May, 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 time and again and thereafter reengaged her. 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 engaged for the months of November and December, 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 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 Gaiinda 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 Gajendragadkar, 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. January, 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 2nd Day of June, 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. : 118 of 2024
Instituted on : 21-10-2024
Decided on : 02-06-2026**

Tenzin Sonam s/o Sh. Ringchen Chhering, r/o Village Langcha, P.O. Hikkam, 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 Tenzin Sonam, s/o Sh. Ringchen Chhering, r/o Village Langcha, P.O. Hikkam, Tehsil Kaza, 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 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 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 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 month of December, 2022, 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 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 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 no where 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 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 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 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 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 2nd Day of June, 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. : 119 of 2024
Instituted on : 21-10-2024
Decided on : 02-06-2026

**Palden Lundup s/o Sh. Padma Chhering, r/o Village Shego, P.O. Lara, 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 Palden Lundup, s/o Sh. Padma Chhering, r/o Village Shego, P.O. Lara, Tehsil Spiti, District Lahaul & Spiti, HP during June, 2019 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 2019 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 admitted that in the area of Lahaul & Spiti the casual workers are engaged from May to October every year as a daily wager. He has denied that they were not willing to work in the winter season. He has admitted that they were working on muster roll as daily wagers. 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 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, 2019 and he has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 148 days in the year 2019, 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 June, 2019 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 Gaimda 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, 2019 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 Man-days 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 June, 2019 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 June, 2019 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 June, 2019 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 June, 2019 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 2019 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 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 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 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 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 June, 2019 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 2nd Day of June, 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. : 120 of 2024
Instituted on : 21-10-2024
Decided on : 02-06-2026

Chhering Angdui s/o Sh. Chhering Angrup, 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 Shri Chhering Angdui s/o Sh. Chhering Angrup, r/o Village Langcha, P.O. Hikkam, Tehsil Spiti, District Lahaul & Spiti, HP during May, 2004 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 2004 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 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 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 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 19 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 month of December, 2022, 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, 2004 and he has worked continuously with the department till November, 2022. He has further admitted that the petitioner had completed more than 180 days in the year 2020 to 2022 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, 2004 and since the date of his initial engagement as daily waged beldar, the petitioner had worked with the department regularly but he was not allowed to complete 180 days since May, 2004 till 2019. He further contended that the petitioner has completed more than 180 days in the twelve calendar months preceding the date of his illegal termination since the year 2019 till 2022. 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, 2004 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 2020 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 01.12.2022. 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 from May, 2004 till November, 2022 thereby completing more than 180 working days in the years 2020 to 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, 2004 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, 2004 till November, 2022 and has completed more than 180 days in three years 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 nowhere disputed that the petitioner has worked with the respondent from the month of May, 2004 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 2004 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. 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, 2004 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, HP PWD (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 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 w.e.f. the year 2020 when he had completed 182 days 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 seniority of the petitioner shall be counted from the year 2020 when he had completed 182 days in a year. 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 2nd Day of June, 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. : 121 of 2024
Instituted on : 21-10-2024
Decided on : 02-06-2026

Kesang Lakit w/o Sh. Kalzang Landup, r/o VPO Rangrik, Tehsil Kaza, 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. Kesang Lakit, w/o Sh. Kalzang Landup, 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, 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 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, 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 she has worked continuously with the department till November, 2022. He has volunteered that the petitioner had worked for 60 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 wagger 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 60 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 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 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 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 & August, 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 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 2nd Day of June, 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. : 122 of 2024
Instituted on : 22-10-2024
Decided on : 02-06-2026**

Tenzin Chhoyyi d/o Sh. Chhering Tobgey, r/o V.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 Ms. Tenzin Chhoyyi d/o Sh. Chhering Tobgey, V.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. In 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 December, 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 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 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 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, 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 01.01.2023. 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, 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, 2022 and thereafter continuously worked with the department till December, 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 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/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 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 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 months of 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 November and 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 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 engaged in the month of May, 2022 till December, 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 months of November and December, 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. 01.01.2023 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 i.e. 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 2nd Day of June, 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. : 123 of 2024
Instituted on : 22-10-2024
Decided on : 02-06-2026

Chhering Zangmo d/o Sh. Angdui Dorje, r/o VPO Key, 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, H.P. PWD (B&R) Division Kaza, Tehsil Kaza, District Lahaul & Spiti H.P. to give break in service to Ms. Chhering Zangmo, d/o Sh. Angdui Dorje, r/o V.P.O. Key, Tehsil Kaza, District Lahaul & Spiti, H.P., during May, 2022 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. 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 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 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 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, 2022 and she has worked continuously with the department till December, 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 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 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 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, 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 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, 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 01.01.2023. 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, 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, 2022 and thereafter continuously worked with the department till December, 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 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/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 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 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 months of 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 November and 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 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 engaged in the month of May, 2022 till December, 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 for what purpose the services of petitioner were availed during the months of November and December, 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. 01.01.2023 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 i.e. 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 2nd Day of June, 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. : 124 of 2024
Instituted on : 22-10-2024
Decided on : 02-06-2026

**Tenzin Angmo w/o Sh. Tenzin Chhulim, 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 Angmo, w/o Sh. Tenzin Chhulim, 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 wages 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 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 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 of unavailability of work and funds her services had automatically come 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 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 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 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. 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 2nd Day of June, 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. : 125 of 2024
Instituted on : 22-10-2024
Decided on : 02-06-2026**

**Yeshe Dolma w/o Sh. Laxman, 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 HP to give break in service to Smt. Yeshe Dolma, w/o Sh. Laxman, r/o VPO Rangrik, Tehsil Kaza, District Lahaul & Spiti, H.P., during July, 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 peroperative 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 July, 2021 and she has worked continuously with the department till November, 2022. He

has volunteered that the petitioner had worked for 60 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 July, 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 for 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 July, 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 come 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 July, 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 July, 2021 and thereafter continuously worked with the department till November, 2022. This witness has even volunteered that the petitioner has worked for 60 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 July, 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 no where disputed that the petitioner has worked with the respondent from the month of July, 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 July, 2021 & 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 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 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 2nd Day of June, 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. : 126 of 2024
Instituted on : 22-10-2024
Decided on : 02-06-2026

Chhering Gonpo s/o Shri Chhering Tandup, r/o Village, Key, PO Key Gompa, 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 Shri Chhering Gonpo s/o Shri Chhering Tandup, r/o Village, Key, PO Key Gompa, 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 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 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 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 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. It is also not disputed that the petitioner was not allowed to work for four months and then he was again reengaged in the month of March, 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 no where disputed that the petitioner has worked with the respondent from the month of May, 2021 till December, 2022, except the months of November, 2021 to Feb., 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 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 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 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 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 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 2nd Day of June, 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. : 127 of 2024
Instituted on : 22-10-2024
Decided on : 02-06-2026**

**Shashi w/o Sh. Tanzin Hosser, r/o V.P.O. Kaza, Tehsil Kaza, 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. Shashi, w/o Sh. Tanzin Hossain, r/o V.P.O. Kaza, Tehsil Kaza, District Lahaul & Spiti, H.P., during May, 2022 to October, 2022 and finally terminating her services during October, 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, Anrup 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 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 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, 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 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 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 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, HP PWD (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 2nd Day of June, 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. : 129 of 2024
Instituted on : 22-10-2024
Decided on : 02-06-2026**

Mentok Lache d/o Shri Chuldim, r/o VPO Demual, 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. Mentok Lache d/o Shri Chuldim, r/o VPO Demual, 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 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 she has worked continuously with the department till December, 2022. He admitted that the petitioner had completed 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 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 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. 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 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 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 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 April, November and 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 December, 2021 where after she was again reengaged in the month of May, 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 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 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, HP PWD (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 2nd Day of June, 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. : 130 of 2024
Instituted on : 22-10-2024
Decided on : 02-06-2026

**Kalzung Lakit w/o Sh. Takpa Chundi, 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 Lakit w/o Sh. Takpa Chundi, r/Oo 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 Man-

days 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 *Fatum* 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 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 Gaiinda 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 2nd Day of June, 2026.

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

OFFICE OF THE MUNICIPAL CORPORATION SOLAN
DRAFT BYE-LAWS OF PROPERTY TAXATION-AMENDMENT-2026

NOTIFICATION

Solan, 20th July, 2026

No. UD-SLN(A)-TA(9)-3/2018.—In exercise of the powers conferred under Chapter XVIII read with section 395 of the Himachal Pradesh Municipal Act, 1994, I, Dr. Rajdeep Singh, Commissioner, Municipal Corporation Solan, Distt. Solan, Himachal Pradesh hereby notify the following Bye-laws :—

Short title and commencement.	1. These Bye-Laws may be called the Municipal Corporation Solan (Property Taxation) Bye-Laws- Amendment, 2026. 2. It shall be deemed to have come into force on the date of publication in the Rajpatra (e-gazette) of Himachal Pradesh.
Amendment of Section 10	Demand of property tax to be raised annually by issuing one single bill for one unit of a property :—

	In 10 (i) after the words "Demand of property tax shall be raised annually by issuing a single property tax bill on form-B annexed to these Bye-laws for each unit of property." The words "The service of bill shall be effected by hand through special messenger and in case owner or occupier upon whom the bill is to be served is living outside the Municipal limits, the bill shall be issued by post under certificate of posting or by registered/speed post. In case the owner or occupier avoid by hand service of the bill, the same shall be effected through affixing the bill in presence of two witnesses on the unit of the property to which the bill relates" may be omitted, and the words "The bill shall be issued by online mode and service of bill shall be done by sending SMS of bill & link on the registered mobile number and payment shall be also deposited by the consumer through online mode", shall be added.
Amendment of Section 23	Method for calculation of rateable value and rate of property tax on the rateable value of the unit of lands and building :— In point No. iii in table, after the words "for non-residential properties," the words "flat and purchase floors" shall be omitted.
Amendment of Term & conditions at Sl. No. 4 provided after Form-B	After the words, "Property Tax of unauthorised construction/structure will be charged", the words "double from" shall be omitted, and the words "as per" shall be added.

Sd/-
Commissioner,
Municipal Corporation, Solan.

**THE ADVOCATE GENERAL DEPARTMENT
HIMACHAL PRADESH, SHIMLA-171 001**

NOTIFICATION

Shimla-171 001, the 15th July, 2026

No. 1-11/2024-2770.—Sanction is hereby accorded to the grant of **three (03) days** earned leave *w.e.f.* **20th to 22nd July, 2026** with permission to avail prefix *i.e.* Sunday falling on 19th July, 2026 in favour of **Sh. Vishav Deep Sharma, Additional Advocate General** of this department.

Certified that **Sh. Vishav Deep Sharma, Additional Advocate General** would have continued to officiate but for his proceeding on three (03) days earned leave and that, this period will count for continuation of his service.

Certified that **Sh. Vishav Deep Sharma, Additional Advocate General** is likely, on the expiry of leave to return for duty to the station from where he proceeds on leave.

Sd/-
(RAMAKANT SHARMA),
Additional Advocate General,
Himachal Pradesh, Shimla.

**THE ADVOCATE GENERAL DEPARTMENT
HIMACHAL PRADESH, SHIMLA-171 001**

NOTIFICATION

Shimla-171 001, the 16th July, 2026

No. 1-14/2024-2768.—Sanction is hereby accorded to the grant of **three (03) days** earned leave *w.e.f. 16th to 18th July, 2026* with permission to avail suffix *i.e.* Sunday falling on 19th July, 2026 in favour of **Sh. Amandeep Sharma, Additional Advocate General** of this department.

Certified that **Shri Amandeep Sharma, Additional Advocate General** would have continued to officiate but for his proceeding on three (03) days earned leave and this period will count for continuation of his service.

Certified that **Shri Amandeep Sharma, Additional Advocate General** is likely, on the expiry of leave to return for duty to the station from where he proceeds on leave.

Sd/-
(AMANDEEP SHARMA),
Additional Advocate General,
Himachal Pradesh, Shimla.

जल शक्ति विभाग

अधिसूचना

शिमला-2, 15 जुलाई, 2026

संख्या : जे0एस0वि0-ई003/11/2026.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः उप-मोहाल निचला कोटला, तहसील ऊना, जिला ऊना, हिमाचल प्रदेश में तटीयकरण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि विवरणी 4 में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

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

3. उपरोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राज्यपाल, हिमाचल प्रदेश इस उपक्रम में कार्यरत सभी अधिकारियों, कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उपधारा द्वारा अपेक्षित अथवा अनुमत अन्य सभी कार्यों को करने के लिए सशक्त प्राधिकृत करते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो, तो वह इस अधिसूचना के प्रकाशित होने के 60 (साठ) दिनों की अवधि के भीतर लिखित रूप में कलेक्टर/समाहर्ता (लो0 नि0 वि0 कांगड़ा) हिमाचल प्रदेश के समक्ष अपनी आपत्ति दायर कर सकता है।

विस्तृत विवरणी

जिला	तहसील	गांव/उप-मोहाल	खसरा नं०	क्षेत्र/बिस्वा/है०
ऊना	ऊना	निचला कोटला	151 / 1	0-04-08 है०
			कुल	0-04-08 है०

आदेश द्वारा,

प्रधान सचिव (जल शक्ति)।

JAL SHAKTI DEPARTMENT

NOTIFICATION

Dated 15th July, 2026

JSB-F010/11/2025-JAL SHAKTI-B.— The Governor, Himachal Pradesh is pleased to order constitution of Grievance Redressal Committee (GRC) to address the grievances pertaining to implementation of Himachal Pradesh- Resilient Action for Development and Disaster Recovery (READY-HP) financed by World Bank, as under :—

Sl. No.	Designation	Chairman/Member
1.	Engineer-in-Chief (Project)	Chairman
2.	Chief Engineer (Project Management Unit)	Member
3.	Zonal Chief Engineer of concerned Zone	Member
4.	Project Manager	Member
5.	Superintending Engineer of concerned Circle	Member
6.	Deputy Director Legal o/o the E in C (JSV)	Member
7.	Sub-Divisional Officer (Civil) of concerned civil sub-division (only for External Grievances)	Member
8.	Pradhan of concerned Panchayat (only for External Grievances)	Member
9.	Controller/Joint Controller/Assistant Controller o/o the PMU, Mandi	Member-Secretary

Role and Responsibilities of GRC :—

1. To ensure fair, transparent and confidential handling of grievances from affected individuals, stakeholders and beneficiaries under the READY-HP Project.
2. To review and monitor all grievances received through various channels (online portal, written applications, field-level mechanisms, etc.).
3. To ensure that all grievances are registered, acknowledged and assigned a unique reference number.
4. To dispose of grievances within the stipulated timeframe as per the Grievance Redressal Mechanism (GRM) framework of the project.

5. To ensure that grievance unresolved at lower levels are appropriately escalated and addressed at the State level.
6. To review periodic reports on Grievance Redressal and provide necessary directions for improving responsiveness and accountability.
7. To ensure that adequate awareness regarding the GRM is created through display boards, IEC materials and outreach activities.
8. To ensure compliance with Environmental and Social Framework (ESF) requirements of the World Bank in grievance handling.
9. A notified Grievance Redressal Officer to be nominated at Project level by the designated committee for regular facilitation of GRC.

The committee shall meet as and when required, to review the status of grievances and ensure timely resolution. All concerned implementing agencies under READY-HP shall extend full cooperation to the committee and ensure strict adherence to the Grievance Redress Mechanism.

By order,

Dr. ABHISHEK JAIN, IAS,
Principal Secretary (JSV).

PANCHAYATI RAJ DEPARTMENT

NOTIFICATION

Shimla-171 009, the 6th June, 2026

No.: PCH-HA (1)2021/Oath- 36492-36609.—WHEREAS, the new representatives of PRIs have been elected in the general election of PRIs of Himachal Pradesh (except in four GPs namely, Gram Panchayat Jaban, Namhog of Dev. Block Anni and Gram Panchayats Karjan and Soyal of Dev. Block Naggar).

AND WHEREAS, the date for the first meeting of the Panchayats has to be fixed by the Government for newly elected representatives.

Therefore, the Governor of Himachal Pradesh, in exercise of the powers, vested in him under sub-section (1) of section 128 of Himachal Pradesh Panchayati Raj Act, 1994 is pleased to fix the **27th June, 2026**, as the date of the first meetings of the newly constituted Panchayats (except all the GPs/Panchayat Samities of Sub-Division Keylong, Zila Parishad Lahaul-Spiti in Distt. Lahaul & Spiti, Gram Panchayats and Panchayats Samiti in Sub-Division Pangti of Distt. Chamba and above mentioned 4 GPs of Kullu District).

The first meeting of all the newly elected representatives of GPs/Panchayat Samities of Sub-Division Keylong, Zila Parishad Lahaul-Spiti in Distt. Lahaul & Spiti, Gram Panchayats and Panchayats Samiti in Sub-Division Pangti of Distt. Chamba is also fixed to be held on **18th October, 2026**.

In the first meeting of the Gram Panchayat, oath/affirmation shall be administered to the newly elected members of the Gram Panchayat, by the concerned Pradhan, in accordance with Rule 22 of the Himachal Pradesh Panchayati Raj (General) Rules, 1997.

By order,

Secretary (PR).

PANCHAYATI RAJ DEPARTMENT

NOTIFICATION

Shimla-09, the 24th June, 2026

No. PCH-HA/2/2025-Clarif.-38063-38256.—Whereas, the tenure of the elected Gram Panchayats, Panchayat Samitis and Zila Parishads in the State of Himachal Pradesh, except the Gram Panchayats and Panchayat Samitis of Sub-Division Keylong in District Lahaul & Spiti, Gram Panchayats and Panchayat Samitis of Sub-Division Pangi in District Chamba, Zila Parishad Lahaul & Spiti and four Gram Panchayats namely, Gram Panchayat Jaban, Namhog of Dev. Block Anni and Gram Panchayats Karjan and Soyal of Dev. Block Naggar of District Kullu, expired on 31st January, 2026;

And whereas, elections for reconstitution of the aforesaid Panchayati Raj Institutions could not be held before expiry of their tenure due to the prevailing circumstances arising out of the application of the Disaster Management Act, 2005 in the State of Himachal Pradesh;

And whereas, in CWPIL No. 115 of 2025 titled *Dikken Kumar Thakur and another versus State of Himachal Pradesh and others*, the Hon'ble High Court of Himachal Pradesh directed the State Government to ensure conduct of elections to the Panchayati Raj Institutions on or before 30-04-2026;

And whereas, the aforesaid judgment was challenged before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court in SLP(C) No. 5451 of 2026 titled *Principal Secretary, State of H.P. Vs. Dikken Kumar Thakur & others* has directed the State Government and the State Election Commission to complete the elections to Panchayati Raj Institutions and Urban Local Bodies by 31-05-2026;

And whereas, in compliance with the directions of the Hon'ble Supreme Court, elections to the all Gram Panchayats (**except four Gram Panchayats namely, Gram Panchayat Jaban, Namhog of Dev. Block Anni and Gram Panchayats Karjan and Soyal of Dev. Block Naggar of District Kullu**), Panchayat Samitis and Zila Parishads throughout the State were conducted by the State Election Commission on 26th, 28th and 30th May, 2026 and the election process has been completed;

And whereas, the tenure of the existing Gram Panchayats and Panchayat Samitis of Sub-Division Keylong in District Lahaul & Spiti, Gram Panchayats and Panchayat Samitis of Sub-Division Pangi in District Chamba, Zila Parishad Lahaul & Spiti is scheduled to expire on 17th October, 2026 and successor bodies have already been elected in the elections conducted in May, 2026;

And whereas, as a consequence thereof, two elected bodies presently exist in respect of the said Panchayati Raj Institutions, namely the incumbent elected bodies whose tenure is to expire on 17th October, 2026 and the newly elected bodies whose electoral mandate has already been obtained through the completed election process;

And whereas, Article 243E (1) of the Constitution of India provides that every Panchayat shall continue for five years unless sooner dissolved under any law for the time being in force;

And whereas, Section 120 (1) of the Himachal Pradesh Panchayati Raj Act, 1994 provides that every Panchayat shall continue for five years from the date appointed for its first meeting and no longer unless sooner dissolved under the provisions of the Act;

And whereas, sub-section (4) of section 120 provides for the concurrent tenure of panchayats in the State;

And whereas, the existence of a fresh democratic mandate, completion of elections to the successor Panchayats, absence of any governance vacuum and the necessity of maintaining uniformity in the tenure and electoral cycle of Panchayati Raj Institutions throughout the State constitute sufficient grounds for dissolution of the incumbent Panchayati Raj Institutions before completion of their tenure and the Government is satisfied that in the interest of democratic governance, administrative convenience, continuity of local self-government institutions and synchronization of the tenure of Panchayati Raj Institutions across the State, it is necessary to dissolve the existing Gram Panchayats and Panchayat Samitis of Sub-Division Keylong in District Lahaul & Spiti, Gram Panchayats and Panchayat Samitis of Sub-Division Pangti in District Chamba, Zila Parishad Lahaul & Spiti before expiry of their term failing which the Panchayati Raj Institutions in these tribal areas shall once again cease to run concurrently with the Panchayati Raj Institutions in the rest of the State.

Now, therefore, in exercise of the powers conferred under Section 120 (4) of the Himachal Pradesh Panchayati Raj Act, 1994, read with Article 243E of the Constitution of India, the Governor, Himachal Pradesh, is pleased to order the dissolution of the following Panchayati Raj Institutions with immediate effect :—

1. All Gram Panchayats falling within Sub-Division Keylong, District Lahaul & Spiti and Sub-Division Pangti, District Chamba;
2. All Panchayat Samitis falling within Sub-Division Keylong, District Lahaul & Spiti and Sub-Division Pangti, District Chamba; and
3. Zila Parishad, Lahaul & Spiti.

By order,

Secretary (Panchayati Raj).

पंचायती राज विभाग

अधिसूचना

शिमला—9, 09 जुलाई, 2026

संख्या : पीसीएच—एचए(1)4/2006—III—पेसा—39211—39368.—इस विभाग की समसंख्यक अधिसूचना तारीख 01 जून, 2026 के अन्तर्गत, हिमाचल प्रदेश पंचायती राज (अनुसूचित क्षेत्रों पर विस्तार)

संशोधन नियम, 2026 का प्रारूप, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 की धारा 186 के उपबन्धों के अधीन यथा अपेक्षित जनसाधारण से आक्षेप(पों) और सुझाव(वों) आमन्त्रित करने के लिए राजपत्र हिमाचल प्रदेश में तारीख 3 जून, 2026 को प्रकाशित किए गए थे;

और नियत अवधि के दौरान इस निमित्त कोई आक्षेप/सुझाव प्राप्त नहीं हुआ है;

अतः राज्यपाल हिमाचल प्रदेश, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (1994 का अधिनियम संख्या 4) की धारा 186 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस विभाग की अधिसूचना संख्या: पीसीएच-एचए (1) 4/2006-III-45285-307, दिनांक 26 मार्च, 2011 द्वारा अधिसूचित और राजपत्र (ई-गजट) हिमाचल प्रदेश में तारीख 01 अप्रैल, 2011 को प्रकाशित हिमाचल प्रदेश पंचायती राज (अनुसूचित क्षेत्रों पर विस्तार) नियम, 2011 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात् :—

नियम

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश पंचायती राज (अधिसूचित क्षेत्रों पर विस्तार) संशोधन नियम, 2026 है।

(2) ये नियम राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होंगे।

2. नियम 6 का संशोधन.—हिमाचल प्रदेश पंचायती राज (अधिसूचित क्षेत्रों पर विस्तार) नियम, 2011 के नियम 6 के उप-नियम(2) के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :—

“सम्बद्ध ग्राम सभा के आज्ञापक परामर्श के पश्चात और हिमाचल प्रदेश भूमि अन्तरण (विनियमन) अधिनियम, 1968 की धारा 3 के उपबन्धों के अनुरूप के सिवाय अनुसूचित जनजाति से संबंधित किसी व्यक्ति द्वारा भूमि या उसमें किसी प्रकार के हित का अन्तरण प्रभावी नहीं होगा।”।

आदेश द्वारा,

सचिव (पंचायती राज)।

[Authoritative English text of this Department Notification Number PCH-HA (1)4/2006 -III-PESA-dated 09-07-2026 as required under clause (3) of Article 348 of the Constitution of India].

PANCHAYATI RAJ DEPARTMENT

NOTIFICATION

Shimla-171 009, the 9th July, 2026

No. PCH-HA (1)4/2006-III-PESA-39211-39368.—Whereas the draft Himachal Pradesh Panchayati Raj (Extension to the Scheduled Areas) Amendment Rules, 2026 were notified *vide* this Department notification No. PCH-HA (1) 4/2006-III-PESA, on dated 01-06-2026 and published in Rajpatra (e-gazette) of Himachal Pradesh on dated 03-06-2026 for inviting objections and suggestions of the general public as required under the provision of section 186 of the Himachal Pradesh Panchayati Raj Act, 1994;

And whereas, no objection /suggestion has been received in this behalf during the stipulated period;

Now, therefore, in exercise of the powers conferred by section 186 of the Himachal Pradesh Panchayati Raj Act, 1994 (Act No. 4 of 1994), the Governor of Himachal Pradesh is pleased to make the following rules further to amend the Himachal Pradesh Panchayati Raj (Extension to the Scheduled Areas) Rules, 2011 notified *vide* this Department notification No. PCH-HA (1) 4/2006-III-45285-307, dated 26th March, 2011 and published in the Rajpatra, Himachal Pradesh on dated 01-04-2011, namely :—

1. Short title and Commencement.—(1) These rules may be called the Himachal Pradesh Panchayati Raj (Extension to the Scheduled Areas) amendment Rules, 2026.

(2) These rules come into force from the date of publication in Rajpatra (e-gazette) Himachal Pradesh.

2. Amendment of rule 6.—For sub-rule of rule 6 of the Himachal Pradesh Panchayati Raj (Extension of the Scheduled Areas) Rules, 2011, the following shall be substituted, namely:—

“No transfer of land or any interest therein by a person belonging to Scheduled Tribe shall be effected except in accordance with section 3 of Himachal Pradesh Transfer of land (Regulation) Act, 1968, after mandatory consultation with the concerned Gram Sabha.”

By order,

Secretary (Panchayati Raj).

ब अदालत श्री अभिराय सिंह ठाकुर, तहसीलदार एवं कार्यकारी मैजिस्ट्रेट, सलूणी,
जिला चम्बा, हिमाचल प्रदेश

श्री बिट्टू पुत्र श्री हसन दीन, निवासी गांव सिंगा परगना मंजीर, तहसील सलूणी, जिला चम्बा (हि0प्र0)
वादी।

बनाम

आम जनता

प्रतिवादी।

उनवान मुकद्दमा.—जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13(3) के अन्तर्गत विलम्बित जन्म/मृत्यु पंजीकरण करने बारे।

श्री बिट्टू पुत्र श्री हसन दीन, निवासी गांव सिंगा परगना मंजीर, तहसील सलूणी, जिला चम्बा (हि0प्र0) ने इस न्यायालय में प्रार्थना—पत्र गुजार कर निवेदन किया है कि उनका जन्म 06-12-1984 को ग्राम पंचायत सिंगाधार, तहसील सलूणी, जिला चम्बा, हिमाचल प्रदेश में हुआ था। लेकिन अज्ञानतावश अपने जन्म का पंजीकरण ग्राम पंचायत सिंगाधार, तहसील सलूणी, जिला चम्बा के जन्म एवं मृत्यु रजिस्टर में दर्ज नहीं करवा सके। अतः ग्राम पंचायत सिंगाधार के जन्म एवं मृत्यु रजिस्टर में उनके जन्म का विलम्बित पंजीकरण करने के आदेश पारित किए जाएं।

अतः उपरोक्त जन्म पंजीकरण बारे सर्वसाधारण व आम जनता को इस राजपत्र इश्तहार व मुनादी द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त जन्म पंजीकरण बारे कोई उजर/एतराज है तो उजरकर्ता दिनांक 03-08-2026 को प्रातः 10.00 बजे इस मुकद्दमा की पैरवी हेतु व्यक्तिगत रूप से अथवा किसी अधिकृत एजेंट के माध्यम से या किसी अधिवक्ता के माध्यम से इस न्यायालय में उपस्थित होकर उजर

पेश कर सकता है। गैरहाजिरी की सूरत में मुताबिक प्रार्थना-पत्र जन्म पंजीकरण करने हेतु आदेश पारित कर दिये जाएंगे एवं तारीख पेशी अर्थात् 03-08-2026 के बाद कोई भी उजर/एतराज विचारणीय न होगा।

आज दिनांक 02-07-2026 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
तहसीलदार एवं कार्यकारी मैजिस्ट्रेट,
सलूणी, जिला चम्बा (हि0प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश

मिसल नं0 : 818654/26

आगामी पेशी : 27-07-2026

श्री चन्द्र कान्त पुत्र श्री स्व0 वेद राम निवासी गांव फलोहू, डा0 ब्रैहिन, तहसील सैंज, जिला कुल्लू (हि0प्र0) प्रार्थी।

बनाम

आम जनता

विषय.— Section 37 of H.P. Land Revenue Act, 1954 (राजस्व इंद्राज नाम दुरुस्ती)।

श्री चन्द्र कान्त पुत्र श्री स्व0 वेद राम निवासी गांव फलोहू, डा0 ब्रैहिन, तहसील सैंज, जिला कुल्लू (हि0प्र0) ने इस अदालत में आनलाईन आवेदन पत्र प्रस्तुत किया है उसका नाम राजस्व अभिलेख मोहाल रोट-1 पटवार वृत्त भलाण में चन्दसैन दर्ज है जोकि गलत दर्ज हुआ है। जबकि अन्य दस्तावेजों में उसका नाम चन्द्र कान्त दर्ज है, जो की सही है। प्रार्थी ने ब्यान हलफिया दिया है कि चन्दसैन व चन्द्र कान्त दोनों नाम उसके ही हैं। प्रार्थी राजस्व अभिलेख पटवार वृत्त भलाण के महाल रोट-1 में अपना नाम चन्दसैन के बजाए चन्दसैन उर्फ चन्द्र कान्त दर्ज करवाना चाहता है। प्रार्थी ने इस अदालत से प्रार्थना की है कि उसका नाम दर्ज करने के सम्बन्धित क्षेत्रीय कानूनगो/पटवारी को लिखित आदेश पारित करने की कृपा की जाए।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थी का नाम राजस्व अभिलेख पटवार वृत्त भलाण के महाल रोट-1 में दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन/वकालतन तारीख पेशी 27-07-2026 को सुबह 11.00 बजे हाजिर होकर अपना उजर पेश कर सकता है। निर्धारित अवधि के पश्चात् कोई उजर व एतराज प्राप्त न होने पर प्रार्थना-पत्र स्वीकार जाकर राजस्व अभिलेख पटवार वृत्त भलाण के महाल रोट-1 तहसील सैंज में उक्त प्रार्थी का नाम चन्दसैन उर्फ चन्द्र कान्त पुत्र वेद राम दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 10-07-2026 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील सैंज, जिला कुल्लू (हि0प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश

मिसल नं0 : 45/2026

आगामी पेशी : 04-08-2026

श्री यान सिंह पुत्र श्री लजू राम, निवासी गांव जाहिला, डा0 बनोगी, तहसील सैंज, जिला कुल्लू (हि0प्र0) प्रार्थी।

बनाम

आम जनता

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

श्री यान सिंह पुत्र श्री लजू राम, निवासी गांव जाहिला, डा0 बनोगी, तहसील सैंज, जिला कुल्लू (हि0प्र0) ने एक आवेदन पत्र जिला रजिस्टार जन्म व मृत्यु एवं मुख्य चिकित्सा अधिकारी कुल्लू के कार्यालय पत्र संख्या HFW-ST(B&D) Delay Birth and Death-KLU-2026-7456, Dated 05-05-2026, जो कार्यकारी दण्डाधिकारी, तहसील सैंज को सम्बोधित है, इस अदालत में प्रस्तुत किया है तथा प्रार्थी ने शपथ पत्र में उल्लेख किया है कि उसकी जन्म तिथि 19-08-1978 है जोकि अज्ञानतावश ग्राम पंचायत बनोगी के रिकार्ड में दर्ज नहीं हुई है। प्रार्थी अपनी जन्म तिथि 19-08-1978 दर्ज करवाना चाहता है। प्रार्थी ने इस अदालत से प्रार्थना की है कि उसकी जन्म तिथि दर्ज करने के सम्बन्धित पंचायत को लिखित आदेश पारित करने की कृपा की जाए।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थी की जन्म तिथि ग्राम पंचायत बनोगी के जन्म परिवार रजिस्टर भाग-1 में दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन/वकालतन तारीख पेशी 04-08-2026 को सुबह 11.00 बजे हाजिर होकर अपना उजर पेश कर सकता है। निर्धारित अवधि के पश्चात कोई उजर व एतराज प्राप्त न होने पर प्रार्थना-पत्र स्वीकार जाकर ग्राम पंचायत बनोगी तहसील सैंज में उक्त प्रार्थी की जन्म तिथि 19-08-1978 दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 10-07-2026 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील सैंज, जिला कुल्लू (हि0प्र0)।

CHANGE OF NAME

I, Deepika Negi w/o Sh. Swaroop Singh, r/o Village & Post Office Moorang, Tehsil Moorang, Distt. Kinnaur (H.P.) declare that I have changed my minor daughter's name from Baby Two Of Deepika to Oveya Rathour. She shall be known as Oveya Rathour for all purposes in future. All concerned please note.

DEEPIKA NEGI
w/o Sh. Swaroop Singh,
r/o Village & Post Office Moorang,
Tehsil Moorang, Distt. Kinnaur (H.P.).

CORRECTION OF NAME

I, No. 13720277M Hav. Balbir Singh s/o Late Sh. Bhagi Rath, r/o Village Upperla Tikker, P.O. Tikker Khatrian, Tehsil Bamson (at Tauni Devi), Distt. Hamirpur (H.P.) declare that in my Army record, my daughter's name is wrongly entered as Ranjna Kumari. Whereas, her correct name is Sapna Kumari. All concerned please note.

BALBIR SINGH
s/o Late Sh. Bhagi Rath,
r/o Village Upperla Tikker, P.O. Tikker Khatrian,
Tehsil Bamson (at Tauni Devi), Distt. Hamirpur (H.P.).

CHANGE OF NAME

I, Jagtambo Devi w/o Sh. Jagdish Chand, r/o Village Jandpur, P.O. Jandpur, Tehsil Baijnath, Distt. Kangra (H.P.) declare that I have changed my name from Jagtamba Devi to Jagtambo Devi. I shall be known as Jagtambo Devi for all purposes in future. All concerned please note.

JAGTAMBO DEVI
w/o Sh. Jagdish Chand,
r/o Village Jandpur, P.O. Jandpur,
Tehsil Baijnath, Distt. Kangra (H.P.).

CHANGE OF NAME

I, Radha Kishan s/o Sh. Ratan Dass, r/o Village Dali, P.O. Masli, Tehsil Chirgaon, Distt. Shimla (H.P.) declare that my daughter's name is wrongly mentioned as Many Chauhan in her Aadhar Card No. 8106 4663 4468. Therefore it should be changed to Suhana in her Aadhar Card. Note the relevant information.

RADHA KISHAN
s/o Sh. Ratan Dass,
r/o Village Dali, P.O. Masli,
Tehsil Chirgaon, Distt. Shimla (H.P.).

CORRECTION OF NAME

I, Anil Kumar s/o Late Sh. Narain Singh, r/o Village Ghrema, P.O. Summerkot, Tehsil Rohru, Distt. Shimla (H.P.) declare that my daughter's name is wrongly mentioned as Shaya in her Aadhar Card No. 9817 7301 3262. Therefore it should be changed to Shreya in her Aadhar Card. Note the relevant information.

ANIL KUMAR
s/o Late Sh. Narain Singh,
r/o Village Ghrema, P.O. Summerkot,
Tehsil Rohru, Distt. Shimla (H.P.).

CHANGE OF NAME

I, Prem Prakash s/o Late Sh. Bhau Ram, r/o Village Dhamwari, P.O. Tikkari, Tehsil Chirgaon, Distt. Shimla (H.P.) declare that my daughter's name is wrongly mentioned as Baby two of Nita Devi in her Aadhar Card No. 3810 7175 8390. Therefore it should be changed to Abhiti in her Aadhar Card. Note the relevant information.

PREM PRAKASH
s/o Late Sh. Bhau Ram,
r/o Village Dhamwari, P.O. Tikkari,
Tehsil Chirgaon, Distt. Shimla (H.P.).

CHANGE OF NAME

I, Sneha d/o Sh. Viree Singh, r/o V.P.O. Thara, Tehsil Jogindernagar, Distt. Mandi (H.P.) declare that I have changed my name from Neha Devi to Sneha for all purposes in future. All concerned please note.

SNEHA
d/o Sh. Viree Singh,
r/o V.P.O. Thara,
Tehsil Jogindernagar,
Distt. Mandi (H.P.).

CHANGE OF NAME

I, Satnam Singh s/o Sh. Prem Singh, r/o Village Chowki Maniar, P.O. Chowki Maniar, Sub-Tehsil Jol, Tehsil Bangana, Distt. Una (H.P.) declare that I have changed my minor daughter's name from Shreya Choudhary to Shreya Chaudhary. She shall be known as Shreya Chaudhary for all purposes in future. All concerned please note.

SATNAM SINGH
s/o Sh. Prem Singh,
r/o Village Chowki Maniar,
P.O. Chowki Maniar, Sub-Tehsil Jol,
Tehsil Bangana, Distt. Una (H.P.).

CORRECTION OF NAME

I, Sarwan Kumar age 63 years s/o Sh. Salig Ram, r/o Village & Post Office Nandrool, Tehsil & District Kangra (H.P.) declare that my name in my Aadhar Card is Sawarn Singh, which is wrong. My correct name is Sarwan Kumar. Sawarn Singh and Sarwan Kumar are the names of the same person. Please note.

SARWAN KUMAR
s/o Sh. Salig Ram,
r/o Village & Post Office Nandrool,
Tehsil & District Kangra (H.P.).

CHANGE OF NAME

I, Yad Wanti w/o Sh. Padam Dev, r/o Post Office Khalwan, Tehsil Balichowki, Tiki (669), P.O. Khalwan, Distt. Mandi (H.P.) declare that in Aadhar Card of my minor daughter having number 5301 7270 2159, her name is wrongly entered as Lara Kumari d/o Yad Wanti. Her correct name is Lata Devi. All concerned note please.

YAD WANTI
w/o Sh. padam dev,
r/o Post Office Khalwan, Tehsil Balichowki,
Tiki (669), P.O. Khalwan, Distt. Mandi (H.P.).

CHANGE OF NAME

I, Nok Singh s/o Sh. Harji, r/o Post Office Thachi, Tehsil Balichowki, Duchar, P.O. Thachi, Distt. Mandi (H.P.) declare that in Aadhar Card of my minor son having number 3697 3264 1069, his name is wrongly entered as Mhashvar s/o Nok Singh. His correct name is Maheshwar. All concerned note please.

NOK SINGH
s/o Sh. Harji,
r/o Post Office Thachi, Tehsil Balichowki,
Duchar, P.O. Thachi, Distt. Mandi (H.P.).

CHANGE OF NAME

I, Kusum Lata w/o Sh. Desh Raj, r/o Village Badi Bajgan, Post Office Thaltukhod, Distt. Mandi, Tehsil Tikken, Badi Bajgan (429), P.O. Thaltukhod, Distt. Mandi (H.P.) declare that my correct name is Kusum Lata and wrongly recorded in my Aadhar No. 3282 4768 2738 as Kusham Lata. All concerned note please.

KUSUM LATA
w/o Sh. Desh Raj,
r/o Village Badi Bajgan, Post Office Thaltukhod,
Distt. Mandi, Tehsil Tikken, Badi Bajgan (429),
P.O. Thaltukhod, Distt. Mandi (H.P.).

CHANGE OF NAME

I, Vinod Sharma s/o Sh. Sudershan Kumar Sharma, r/o Village Shanol, P.O. Dev Nagar Via Totu, Shimla-11, Tehsil and Distt. Shimla (H.P.)-171 011 declare that I have changed my son's name from Nithyansh Sharma (previous name) to Nityansh Sharma (new name) in his Aadhar Card records. All concerned please may note.

VINOD SHARMA
s/o Sh. Sudershan Kumar Sharma,
r/o Village Shanol, P.O. Dev Nagar Via Totu,
Shimla-11, Tehsil and Distt. Shimla (H.P.)-171 011.

CHANGE OF NAME

I, Mehar Singh s/o Late Sh. Tirth Ram, r/o V.P.O. Dhara, Tehsil Bhuntar, Distt. Kullu (H.P.)-175 105 declare that I have changed my daughter's name from "Khooshboo" to "Khushbu". In future she must be known as "Khushbu". Concerned note it.

MEHAR SINGH
s/o Late Sh. Tirth Ram,
r/o V.P.O. Dhara, Tehsil Bhuntar,
Distt. Kullu (H.P.)-175 105.

CHANGE OF NAME

I, Sadhvi Urmila Dass d/o Sh. Chattar Singh, r/o Village Kali Chhand, P.O. Badka, Tehsil Salooni, Distt. Chamba (H.P.) declare that I have changed my name from Urmila Devi to Sadhvi Urmila Dass. All concerned note.

SADHVI URMILA DASS
*d/o Sh. Chattar Singh,
r/o Village Kali Chhand, P.O. Badka,
Tehsil Salooni, Distt. Chamba (H.P.).*

CORRECTION OF NAME

I, Uma Devi aged 19 years d/o Sh. Kushal Singh, r/o Village Bansu, P.O. Kharihar, Tehsil and Distt. Kullu (H.P.) do hereby solemnly and declare on oath that in my Aadhar inadvertently entered as Oma Devi d/o Kushal Chand. Now, I have been corrected my name from Oma Devi d/o Kushal Chand to Uma Devi d/o Kushal Singh as per matriculation Certificate. Today onwards my name be considered as Uma Devi d/o Kushal Singh for all purposes. Please concerned note that.

UMA DEVI
*d/o Sh. Kushal Singh,
r/o Village Bansu, P.O. Kharihar,
Tehsil and Distt. Kullu (H.P.).*
