



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 04 जनवरी, 2022 / 14 पौष, 1943

हिमाचल प्रदेश सरकार

श्रम एवं रोजगार विभाग

अधिसूचना

शिमला—171 002, 30 दिसम्बर, 2021

संख्या: श्रम (ए)4-1/2021.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (5) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राज्य सरकार श्रम एवं रोजगार विभाग, भारत सरकार के अनुमोदन तथा राज्य सरकार के सन्दर्भ से अधिसूचना संख्या लैब-11-2-3/83, दिनांक 27-08-2014 के

प्रति निर्देश से इसके द्वारा नीचे दी गई अनुसूची में विनिर्दिष्ट स्थापनाओं के वर्गों में उक्त अधिनियम के उपबन्धों का विस्तार करते हैं :—

अनुसूची

स्थापनाओं का विवरण	क्षेत्र जिनमें स्थापन स्थित है
1	2
नगर निकाय जिसमें राज्य सरकार द्वारा संचालित नगर निगमों, नगर पालिकाएं, नगर परिषद् एवं अन्य स्थानीय निकाय शामिल हैं, जिसमें दस या अधिक आकस्मिक अथवा संविदात्मक अथवा दोनों आधार पर पिछले बारह महीनों में किसी दिन मजदूरी पर नियोजित किए गए हैं या किए गए थे।	वे सभी क्षेत्र जहां अधिनियम की धारा 1(3) के अधीन कर्मचारी राज्य बीमा अधिनियम, 1948 के उपबन्ध पहले ही लागू किए जा चुके हैं।

आदेश द्वारा,

आर०डी० धीमान,

अतिरिक्त मुख्य सचिव (श्रम एवं रोजगार)।

[Authoritative English Text of this Department Notification No. Shram (A) 4-1/2021, dated 30th December, 2021 as required under clause (3) of the Article 348 of the Constitution of India].

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171 002, the 30th December, 2021

No. Shram (A) 4-1/2021.—In exercise of the powers conferred by sub-section (5) of Section 1 of the Employees' State Insurance Act, 1948, the Government of Himachal Pradesh, Department of Labour and Employment with the approval of Govt. of India, Ministry of Labour & Employment and reference to State Govt., Labour Department, Notification No. **Lab-11-2-3/83, dated 27-08-2014** hereby extend the provision of the Act to the classes of establishments specified in the schedule annexed hereto.

SCHEDULE

Description of establishments	Area in which the establishments are situated
1	2
Municipal bodies including Municipal Corporation (Nagar Nigam), Municipal Councils, Nagar Palika & Other Urban Local Bodies run by the State Government wherein ten or more persons on casual or contractual or both, basis are employed, or were employed for wages on any day of the preceding twelve months.	All areas where provisions of the Employees' State Insurance Act, 1948 have already been brought into force under sub-section (3) of Section 1 of Act.

By order,

R. D. DHIMAN,

Addl. Chief Secretary (Lab. & Emp.).

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Dharamshala, the 17th December, 2021*

No. Shram(A) 6-2/2020 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	158/2016	Darshana Devi	I & P.H. Chamba	06-09-2021
2.	694/2016	Bittu Ram	D.F.O. Chamba	06-09-2021
3.	695/2016	Daleep Singh	D.F.O. Chamba	07-09-2021
4.	696/2016	Ambreek	D.F.O. Chamba	07-09-2021
5.	487/2016	Rajneesh Singh	Principal, D.A.V.	11-09-2021
6.	38/2018	Chuni Lal	D.F.O. Suket	24-09-2021
7.	39/2018	Rajender Kumar	D.F.O. Suket	24-09-2021
8.	201/2017	Dorje Angrup	D.F.O. Lahaul & Spiti	24-09-2021
9.	27/20	Mridul Kumar	Principal Govt. Pt. Jawahar Lal Nehru Medical College & Hospital Chamba.	09-09-2021
10.	28/20	Rakesh Kumar	Principal Govt. Pt. Jawahar Lal Nehru Medical College & Hospital Chamba.	09-09-2021

By order,

R. D. DHIMAN, IAS,
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.: 158/2016

Date of Institution: 17-3-2016

Date of Decision: 06-9-2021

Smt. Darshna Devi d/o Shri Sohan Lal, r/o Village Mohalla Mugla, P.O. Hardaspura, Chamba Town, Tehsil and District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, I&PH Division Chamba, District Chamba, H.P. . *Respondent.*

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

For the Petitioner : Sh. I.S. Jaryal, Ld. AR

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

1. "Whether alleged time to time termination of services of Smt. Darshna Devi d/o Sohan Lal, r/o Village Mohalla Mugla, P.O. Hardaspura, Chamba Town, Tehsil and District Chamba, H.P. during the year 1996 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised her industrial dispute after more than 7 years *vide* demand notice dated 15-06-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits the above worker is entitled to from the above employer/management?"
2. Whether the demand of regularization of daily wagger services raised *vide* demand notice dated 15-06-2021 after more than 7 years of Smt. Darshna Devi d/o Shri Sohan Lal, r/o Village Mohalla Mugla, P.O. Hardaspura, Chamba Town, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?"

2. Facts in nutshell as pleaded in the statement of claim are that petitioner was initially engaged on muster roll basis by the respondent as daily waged beldar in February, 1996. She continuously worked on daily waged basis till October, 2013. Her services were regularized during the month of October, 2013 after rendering about 18 years daily waged service. The department gave artificial/fictional breaks by allowing her to work for 18 days in a month to prevent petitioner from completing 240 days in a year which is alleged to be unfair labour practice. The intermittent

break for 12/13 days in each month from 1996 to April, 2006 is stated to be due to the fault of respondent and petitioner is not a defaulter. Petitioner has claimed the intermittent breaks to be counted for calculation of 240 days continuous service in each calendar year for her regularization as daily waged services. Same is stated to be violation of Section 25-B of the Act. Intermittent breaks are also stated to be given to petitioner just to favour the junior workmen favourite to the respondent. Despite various requests with the department to allow petitioner to work for full months instead of allowing work only for 18 days on muster roll in a month, nothing has been done by department. At last the matter was brought to the notice of the trade union during 2006 and the Under Secretary (IPH) has issued instructions dated 27th March, 2006 to all the field offices to allow work for full month. The acts of respondent are stated to be illegal, unjustified, against principle of natural justice and in violation of Articles 14 and 16 of Constitution of India besides statutory provisions under Section 25-B and 25-G of the Act. Thus petitioner prayed for declaring intermittent artificial breaks as illegal and counting the break period as continuous service. Further for back wages for intermittent period from 1996 to April, 2006 as well regularization in work charged cadre retrospectively from such date her immediate workmen have been regularized under 8 years regularization policy in view of judgment *Rakesh Kumar vs. State of H.P. and Ors.* as also consequential benefits.

3. Claim petition was contested by respondent by filing of reply raising preliminary submissions that no legal and fundamental right of petitioner has been violated. The petition being bad on the ground of delay and laches, as such not maintainable. On merits, the respondent admitted the petitioner continuously working on daily waged basis with the respondent but stated the work to be intermittent from 1996 to April, 2006 and thereafter continuous with respondent. Respondent denied the fictional breaks given to prevent the petitioner from completing 240 days in a year. It is averred that work was allotted to the petitioner as per availability of work and funds. Regularization of petitioner in the month of October, 2013 is admitted. It is further averred that only those workers were regularized by the department who have continuously worked and fulfilled the criteria of regularization as per Government policy. It is denied that junior workmen were allowed to work continuously by ignoring the petitioner. Issuance of instructions vide letter dated 27th March, 2006 is not denied. Petitioner is stated to have been gainfully employed as an agriculturist during period from 1996 to April, 2006. Respondent prayed for dismissal of the claim of petitioner.

4. Rejoinder was filed by the petitioner denying averments of the reply and reasserting those of the claim petition.

5. On the pleadings of parties, following issues were framed on 12-10-2017:—

1. Whether time to time termination of services of the petitioner by the respondent during year, 1996 to April, 2006 is/was illegal and unjustified as alleged? . . .*OPP.*
2. Whether the demand of regularization of daily wage service raised *vide* demand notice dated 15-6-2014 is legal and justified as alleged? . . .*OPP.*
3. If issues No.1 or No.2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

5. Whether the claim petition is bad on the ground of delay and laches as alleged? . . *OPR*.
Relief.
6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.
7. Arguments of learned Authorized Representative for the petitioner and learned Deputy District Attorney for the respondent were heard and records carefully perused.
8. For the reasons to be recorded hereinafter the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : As per operative part of discussion

Issue No. 4 : No

Issue No. 5 : No

Relief. : Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No.1

9. Petitioner Smt. Darshna Devi stepped into the witness box as PW1 and deposed on oath through her affidavit Ex.PW1/A her entire case as set up in the claim petition. She specifically deposed that respondent/department in the year 1996 had employed her as daily wager and thereafter in October 2013 she was regularized. Further that respondent/department used to issue muster rolls only for 18-20 days during year 1996 to April, 2006 and deliberately gave fictional breaks so that petitioner could not complete 240 days whereas the department had sufficient budget and work used to be available. She also categorically deposed that pursuant to letter dated 27th March, 2006 of Himachal Pradesh Government the respondent/department issued muster roll for complete month of May, 2006 and stopped the fictional breaks. But from 1996 to April, 2006 the period was not counted for seniority which deserves to be joined in the continuous service. Further her deposition is that she presented joint request letter dated 22-4-2008 (Mark-A6) along-with her other companion workers for counting the period of fictional breaks from 1996 to April, 2006 in the continuous service under eight years regularization scheme of the Government. Eight co-workers of petitioner had filed the claims before this Labour Court and *vide* decision dated 22-4-2013 declaring the fictional breaks illegal, eight junior workers were regularized and awarded service benefits. Thus, she prayed that period of fictional breaks from 1996 to April, 2006 be included for her continuous service by seeking the edge of judgment Rakesh Kumar vs. State of

H.P. & Ors. for consequential benefits with continuity in service from the initial date of engagement and regularization of daily waged service as well other financial benefits. She also tendered in evidence copy of letter dated 27-4-2006 Ex.PW1/B, copy of mandays chart Ex.PW1/C, copy of court order dated 22-4-2013 Ex.PW1/D, copy of letter dated 19-7-2013 Ex.PW1/E, copy of regularization order dated 21-1-2021 Ex.PW1/F, copy of joint representations dated 18-9-2013 Mark-A1, dated 13-4-2004 Mark-A2, list of juniors workers Mark-A3, Divisional seniority list Mark-A4, Divisional seniority list of junior beldars Mark-A5, copy of joint representation Mark-A6 and representation dated 17-5-2013 Mark-A7. In her cross-examination she admitted that she is still working as daily wagger in the respondent/department. She admitted that in year 2006 department gave her work for more than 240 days. She denied department apprising her that enough work could not be made available. She also admitted that she was regularized in the department. She also denied that from 1996 to 2005 as she has not worked for 240 days so this period was not considered at the time of regularization. She denied that from 2006 to 2014 she had not represented against the breaks. She denied that she had filed a false claim. Later Authorized Representative of petitioner tendered in evidence copies of muster rolls marked B1 to B16 as additional evidence.

10. On the other hand, respondent examined Executive Engineer Sh. Dinesh Kapoor, I&PH Division Chamba as RW1 who deposed through his affidavit Ex.RW1/A the defence of respondent as submitted in the reply. RW1 also tendered in evidence copy of mandays chart of petitioner and other co-workers Ex.RW1/B. He denied that petitioner had completed 240 days in any year. He stated that petitioner worked intermittently with the respondent from February, 1996 to April, 2006 and thereafter continuously with the respondent. He stated that the work was allotted to the petitioner as per availability of work and funds. He also stated that only those workers were regularized by the department who continuously worked with respondent and had fulfilled the criteria for regularization as per government policy. He denied violation of any provisions of the Industrial Disputes Act. In cross-examination he has admitted that petitioner was initially engaged in January, 1996 on muster roll. He admitted preparation of Ex.PW1/C (mandays chart) by the department. He also admitted preparation of seniority lists Ex.P1 and P2 by the department and that workers at serial No.1 to 87 in Ex.P2 stand regularized in 2007. He claimed ignorance if Ajay Kumar, Vijay Singh, Shamsher Singh, Kewal Krishan, Pawan, Raj Kumar, Tilak Raj and Hem Raj on completion of eight years on muster rolls had been regularized with all consequential benefits. He admitted that Government *vide* Ex. PW1/E had directed to implement the Court orders in respect of aforementioned workers.

11. On consideration of the aforementioned evidence, it is observed that Ex.PW1/B is letter dated 27-3-2006 of the Principal Secretary, IPH, Government of Himachal Pradesh to all the Executive Engineer, IPH Department wherein it is mentioned that the labourers have been engaged for 15-18 and 20 days in a month and as per information available in the department around 300 workers were working since 1994 onwards or other later dates. The Courts have not recognized these fictional breaks and held such persons to be in continuous employment on daily wages basis. In view of same, it has been decided by the government that these labourers should henceforth be engaged on full month basis and accordingly an action was requested in this regard and compliance to be sent to the department.

12. Pursuant to this letter, mandays chart Ex.RW1/C of the petitioner does reveal that earlier from 1996 till 2005 petitioner had not worked for 240 days in a year, but in the year 2006 she had worked for 314 days and thereafter from 2007 till 2013 when she was regularized on 4-10-2013 she had worked for more than 240 days in each year. This supports the case of petitioner to the effect that she was not allowed to work for 240 days from 1996 till 2005, whereas *vide* letter Ex.PW1/E pursuant to the orders of this court in eight reference cases the petitioners were

held entitled to seniority, continuity in service from the date of their initial engagement except back wages and against award of this Court in Reference No. 215/2012 titled as Hem Raj vs. Executive Engineer Ex.PW1/D no further agitation was made by the department.

13. The seniority list of junior beldars of IPH Ex.P2 does reveal that persons who were engaged as daily wagers in 1997 and 1998 have been regularized. This seniority list does reveal that persons engaged in 1996-1997 after engagement of petitioner *i.e.* serial No. 36 Prahalad who joined on 1-4-1997/1998 to serial No.87 Puran Chand engaged on 1-5-1997, have all worked for more than 240 days in the years onwards. Puran Chand at serial no.87 is shown to have completed even 265 days in 1998. Thus, time to time termination of petitioner is contrary to the principle of 'last come first go' engrained under Section 25-G of the Act. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason as has been held by Hon'ble Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116. Certainly, no cogent reason has been assigned/established for termination of the services of the petitioner intermittently.

14. RW1 has admitted that the workers at serial No. 1 to 87 in seniority list Ex.P2 of junior beldars stood regularized in 2007. The junior beldars in seniority list Ex.PW2 all had been engaged in 1996/1997 *i.e.* after the engagement of petitioner admittedly, in January, 1996. As they stand regularized it can be gathered from Ex.P2 that they had worked for 240 days or more in calendar year for the work provided by the department. If there was no work and funds available with the respondent how the junior persons to the petitioner were engaged for more than 240 days by the respondent, has not been explained. This act of respondent is discriminatory towards the petitioner. Hon'ble Supreme Court of India in State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors. (2015) 1 SCC 347 has held that non extension of benefit accorded in favour of particular set of employees by the Court to similarly situated persons violates Article 14 of the Constitution of India as like should be treated alike. The Award passed by this Court Ex.PW1/D is pertaining to Hem Raj, who was engaged by respondent/department as daily waged beldar in the month of March, 1997. Vide award Ex.PW1/D this Court has held the breaks given by the department being artificial and fictional to be wrong and illegal. He has been held entitled to seniority and continuity in service from the date of his initial engagement except back wages. In view of judgment of Hon'ble Apex Court in Arvind Kumar Srivastava's case (*supra*) the benefit is also required to be extended to the petitioner being similarly situated and consequently it is held that intermittent/fictional breaks from 1996 to April, 2006 are wrong and not tenable in the eyes of law. The muster roll for entire months during this period were not due to fault of petitioner and she is to be presumed in continuous uninterrupted service of the respondent from the date of her initial engagement *i.e.* in the year 1996 till April, 2006 in terms of Section 25-B of the Act. The breaks given by the respondent being intentional have no effect on the seniority and continuity in service of the petitioner. However, the petitioner has not been able to cogently establish that she was not gainfully employed during the period of her idleness and for this reason she is not held entitled to the back wages for the break period. Issue No.1 is accordingly decided in favour of the petitioner and against the respondent.

Issue No. 2 :

15. Petitioner's claim for regularization of her daily waged services is on the ground that the intermittent breaks/fictional breaks are required to be counted for calculation of 240 days

continuous service in each calendar year. It is categorically pleaded that junior workmen had been regularized ignoring the petitioner. RW1 Shri Dinesh Kapoor, Executive Engineer as admitted that the workers mentioned in seniority list Ex.P2 at serial No.1 to 87 have all been regularized. Even Hem Raj who is junior to petitioner has also been regularized in whose favour Award Ex.PW1/D passed by this Court. Letter Ex.PW1/F also shows regularization of Hem Raj. In such circumstances when juniors have been regularized, petitioner in view of fundamental rights enshrined under Articles 14 and 16 of Constitution of India also deserves to be regularized with appropriate assignment of seniority over the junior workers regularized, from the date when her immediate junior was regularized. Issue No. 2 is accordingly decided in favour of the petitioner.

Issue No.3 :

16. In view of positive findings of issues No. 1 and 2 the petitioner is held entitled for counting the period of artificial/intermittent breaks from 1996 to April, 2006 and she shall be deemed to be in continuous service from her initial engagement except back wages as also seniority at the appropriate place. Further, she is also entitled for regularization from the date she is eligible as per the regularization policy of the State Government or the date when her immediate junior was regularized, whichever is earlier. Issue No. 3 is accordingly answered in the above terms.

Issue No.4 :

17. In view of positive findings on issues No.1 to 3, petition is held maintainable. Even otherwise the respondent has not been able to establish the claim petition of petitioner to be not maintainable. Consequently issue no.4 is answered accordingly.

Issue No. 5 :

18. So far as the plea of respondent qua the petition being bad for delay and laches is concerned, it is observed that petitioner has pleaded as well averred on oath that she had been representing to the department regarding daily waged fictional breaks as well retaining the junior workers on work. She has tendered in evidence copy of joint representation Mark- A1 addressed to the Executive Engineer dated 18-9-2003 for issuing full month muster roll, joint representation Mark-A2 dated 13-4-2004 to similar effect and thereafter joint representation Mark-A6 requesting for implementation of government decision dated 27th March, 2006 and another joint application Mark-A7 for allowing similar benefits to the workers as awarded by this Court in Reference Petition Nos. 212 to 217/2012, 232/2012 and 318/2012. In such view of the matter and evidence on record certainly the petitioner has been taking up cause with the authorities and the petition cannot be said to be barred by delay and laches. Furthermore, our Hon'ble High Court in State of H.P. Anr. vs. Partap Singh, 2016(6) ILR HP 1314 relying upon the judgment of Hon'ble Apex Court in the case Raghuvir v. G.M. Haryana Roadways Hissar, (2014)10 SCC 301 has held as under:—

"...that there is no limitation for reference to Labour Court under Section 10 of the Act. It was held that words "At any time" mentioned in Section 10 of the Act clearly define that law of limitation would not be applicable qua proceedings of reference under Section 10 of the Act.

"Section 10 of Industrial Disputes Act, 1947:—Reference of dispute to Boards, Courts or Tribunals-(1) where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing, (a) Refer the dispute to a Board for promoting a settlement thereof, (b) Refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry."

19. In Narain Singh vs. State of H.P. & Ors. 2016 Law Suit (HP) 1013 again Hon'ble High Court of Himachal has turned down the plea of respondent/department regarding delay and laches relying upon Raghuvir v. G.M. Haryana Roadways Hissar (Supra). Consequently, issue No. 5 is answered against the respondent.

Relief :

20. As sequel to the findings on issues framed, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement till April, 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Claim petition is partly allowed and reference is answered accordingly in favour of petitioner. Petitioner shall be deemed to be in continuous service with respondent with all consequential benefits **except back wages**. She is also entitled for regularization from the date she is eligible as per the regularization policy of the State Government or the date when her immediate junior was regularized, whichever is earlier. In the peculiar circumstances of the case, parties bear their own costs. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. :	694/2016
Date of Institution :	03-10-2016
Date of Decision :	06-9-2021

Shri Bittu Ram s/o Shri Sridhar through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P.
. *Petitioner.*

Versus

The Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P.
. *Respondent.*

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

For the Petitioner	: Sh. I.S. Jaryal, Ld. AR
For the Respondent	: Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference to the following effect has been received for adjudication from the appropriate Government:

“Whether time to time termination of the services of Shri Bittu Ram s/o Shri Sridhar through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P. during January, 2009 to August, 2014 and finally during August, 2014 by the Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Facts in nutshell as pleaded in the statement of claim by the petitioner are as follows. Petitioner has claimed to be initially engaged by the respondent on muster rolls as a daily waged beldar/worker in year 2009 and remained working continuously with intermittent breaks till August, 2014 in Forest Range Upper Chamba. The respondent illegally terminated the services of the petitioner several times by passing oral order(s) during the service period by giving fictional/artificial breaks with the intention that petitioner might not complete 240 days continuous service in each calendar year and thus deprived him of the benefits of regularization. Petitioner made several requests to the authorities of respondent to allow him to work continuously without breaks, but in vain. The services of the petitioner were finally terminated in August, 2014 without any reasons and workers junior to him and favourite to respondent were retained on muster rolls continuously and allowed to work for full month. Respondent is alleged to have violated the rules of seniority and principle of ‘last come first go’ under the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served of retrenchment nor one month’s wages paid in lieu of notice period. Further, no retrenchment compensation was paid. Action of respondent is alleged as illegal, unjustified, unconstitutional and in violation of Section 25-F of the Act. Petitioner has mentioned the names of 52 workmen who were allegedly retained and newly engaged by the department but no preference/opportunity was given to petitioner. It is also averred that petitioner was not provided work for no fault on his part. Thus alleging gross violation of statutory provisions under Sections 25-B, F, G and H of the Act, he prayed for setting aside oral orders of illegal termination/retrenchment in 2014, reinstatement in service with full back wages, seniority including continuity in service and counting the period of intermittent breaks with consequential benefits.

3. Respondent contested the claim by filing reply raising preliminary objections that no legal and fundamental right of petitioner was violated, as such, the claim petition is not maintainable. Respondent admitted engaging of petitioner during 2009 but asserted him to be casual labourer for seasonal forestry works. It is further averred that petitioner worked intermittently from January, 2009 to August, 2014 and thereafter left the work at his own sweet will. Petitioner is stated to have not completed 240 days in any calendar year. Petitioner did not come to work at his own. No fictional breaks were allegedly given and no junior was retained by the respondent. It was further averred that as the petitioner had not completed 240 days in preceding 12 calendar months and not fulfilled the conditions of Section 25-B of the Act, therefore, there was no need to serve him notice under Section 25-F of the Act. Respondent thus prayed for dismissal of petitioner’s claim.

4. Rejoinder was filed by the petitioner denying averments of the reply and reasserting those of the claim petition.

5. On the pleadings of parties, following issues were framed on 11.01.2018:—

1. Whether time to time termination of services of the petitioner by the respondent during January, 2009 to August, 2014 is/was improper and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of petitioner during August, 2014 is/was improper and unjustified? . . .*OPP*.
3. If issue No. 1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

6. Evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and learned Deputy District Attorney for the respondent were heard and records carefully perused.

8. For the reasons to be recorded hereinafter the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : As per operative part of discussion

Issue No. 4 : No

Relief. : Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

10. Petitioner Bittu Ram has stepped into witness box as PW1. He has deposed on oath through his affidavit Ex.PW1/A his entire case as set up in the statement of claim. He has categorically deposed that respondent/department had engaged him in January, 2009 as daily wager in the upper range of Forest Division Chamba and he continuously worked till August, 2014 completing 240 days in each year. Thereafter, respondent department from August, 2014 illegally stopped petitioner's work whereas the workers junior to petitioner were retained on work. Respondent/department from 2009 to 2014 gave fictional breaks so that petitioner could not complete 240 days in a year and for which he was given work for 18 to 20 days as per muster roll despite department having adequate budget and work. The junior workers who were favourite to the department officers were retained for the work. The mandays chart annexed with the written statement is incomplete but the department has shown the petitioner to have worked 244 days in

year 2010 from which it is clear that respondent department has violated the provisions of Section 25- B of the Act. Petitioner has given the names of junior workers in his affidavit Ex.PW1/A whose services were retained whereas the department had terminated his service *vide* oral orders in August, 2014. He has also deposed that giving fictional breaks and retaining the junior workers was malafide and unfair labour practice on part of respondent. Notice of one month was not given for retrenchment nor salary for one month in lieu of notice. No retrenchment compensation was paid. Petitioner has prayed for reinstatement from August, 2014 and counting continuity in service from 2009 till August, 2014 as well regularization in service as per five years regularization policy. Further, he has prayed for consequential benefits viz. seniority, regularization and back wages etc.

11. Petitioner has tendered in evidence copies of mandays chart of junior workers Mark-A and Mark-B. In cross-examination, he has denied that work of forest department is seasonal. Voluntarily stated that same continues throughout the year. He has admitted joining work with the department in January, 2009. He denied not regularly going to work. He admitted working till August, 2014. He also admitted that the mandays detail of petitioner provided by the department is correct. He admitted not having completed 240 days in each year. He denied that the department had not retained junior workers. He also denied Moti Ram and Musarbu Devi not having worked with him. Further denied that department had not engaged the persons mentioned in para No.3 of affidavit.

12. On the other hand, Shri Sanjeev Sharma, Divisional Forest Officer, Chamba stepped into witness box as RW1 and deposed through his affidavit Ex.RW1/A the defence of respondent department as taken up in the reply. He claimed the petitioner to have been engaged during 2009 as a casual labourer for seasonal forestry work. According to him, petitioner intermittently worked *w.e.f.* January, 2009 till August, 2014 and thereafter left the work at his own sweet will. Fictional breaks were denied. No junior was stated to be retained by the respondent. He denied petitioner having been deprived to complete 240 days in each calendar year. As petitioner did not fulfill the conditions of Section 25-B of the Act as such there was no need to serve any notice under Section 25-F of the Act. Thus, he claimed that there was no violation of the Act.

13. RW1 has tendered in evidence copies of mandays chart Ex.RW1/B1 to Ex.RW1/B4. He admitted issuance of muster rolls by Divisional Forest Officer and petitioner having been engaged in August, 2009. He admitted that when department provided work, petitioner came for the same. He admitted that when after 2014 petitioner did not come for work, no notice was issued to him. He also admitted that as per record no retrenchment compensation was paid. He admitted that seniority list of daily wagers at the divisional level is prepared. He also admitted filing of reply Ex. PX in the Labour Office in the case of petitioner. He admitted preparation of seniority list Ex.PY. Mark-A and Mark-B were also admitted as Ex. PZ and Ex.PZ1. He could not depose if Moti Ram, Surinder Kumar and Karam Chand were still working in the department.

14. Later, Authorized Representative Shri I.S. Jaryal tendered in evidence copy of letter Mark-PA and Mark-PB copy of result of departmental screening committee.

15. Though, the respondent denied petitioner having completed 240 days in any year but the mandays chart Ex.RW1/B2 does clearly show that petitioner Bittu Ram worked for 244 days in year 2010. As per mandays chart Ex.RW1/B1 to Ex.RW1/B4 petitioner has worked for 142 days in 2009, 244 days in 2010, 219 days in 2011, 222 days in 2012, 128 days in 2013 and 100 days in the year 2014 upto August. Thus, plea of the respondent that petitioner never completed 240 days is incorrect. The mandays chart Ex.RW1/B1 also clearly shows that petitioner was engaged in January, 2009, when he worked 31 days. The mandays chart reveals that petitioner was not provided work regularly. Though, he worked from January, 2009 till August, 2014 but why respondent did not allocate him work for more than 240 days in a year has not been satisfactorily

explained. The plea of respondent that forest activities were seasonal cannot be accepted because the department has not placed on record any document to prove that the services of petitioner were engaged for seasonal works depending upon availability of the work. Furthermore, in terms of Section 25-A (2) of the Act no decision of the appropriate Government declaring the respondent of seasonal character or work therein being performed intermittently has been alleged.

16. It is also to be noted that as per the result Mark-PB of Departmental Screening Committee for regularization of daily wagers of Chamba Forest Circle, which is not disputed by the respondent, Pawan Kumar at serial No. 38 whose date of initial engagement as daily wager is mentioned February, 2011 is shown to have worked 290 days in 2011, 266 days in 2012, 256 days in 2013, 266 days in 2014, 240 days in 2015, 361 days in 2016 and 91 days in 2017. Similarly Nirbla at serial No. 39 who was engaged in January, 2012 has also got work for more than 240 days in the years 2012 to 2016 and 161 days upto June, 2017. How the later inducted daily wagers were allotted so much of work *i.e.* for more than 240 days and not to the petitioner, has not been explained by the respondent which clearly violates Article 14 and 16 of the Constitution of India. It is also worthwhile to mention that both these daily wagers Pawan Kumar and Nirbla were engaged in the years 2011 and 2012 respectively *i.e.* much later than the petitioner engaged in 2009 and they are shown to have been continued till the year 2017 as per Mark-PB whereas the services of the petitioner were terminated in August, 2014. Thus principle of 'last come first go' engrained in Section 25-G of the Act has been violated. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason, as held by Hon'ble Supreme Court in Harijinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116. Certainly, no reason has been assigned for the termination of the services of petitioner in August, 2014. Despite, respondent witness Shri Sanjeev Sharma admitting that seniority list of daily wagers is prepared at the divisional level, the overall Divisional Seniority list has not been brought before the Court by the respondent and no explanation for the same has been given. In such circumstances, not providing 240 days of work in a calendar year to the petitioner by the respondent is not justified as no fault is found on part of the petitioner/workman. That being so, it is observed that artificial/fictional breaks were given to petitioner by the respondent which amounts to unfair labour practice as per the Fifth Schedule of the Act. This break period is required to be counted for the purposes of continuous service as envisaged under Section 25-B of the Act, which provides as under:—

“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 authorised 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;
- (b) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which.—

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The aforementioned Section thus enjoins a duty upon the respondent/employer to provide work atleast for 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. The employer can regulate the working of an employee as per his needs, but in view of spirit engrained in Section 25-B of the Act an employer is duty bound to provide the work for 240 days in a year to the employee/petitioner. Hon’ble Apex Court in Employers In Relation To Digwadih Colliery v. Their Workmen, AIR 1966 SC 75, has held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. Thus, issue No.1 is answered in affirmative.

18. The petitioner has claimed to have been terminated during August, 2014 without serving one month’s retrenchment notice or one month wages in lieu of notice period. Though, respondent has claimed in his reply that petitioner himself did not come for work at his own accord but said plea is contrary to the reply Ex. PX filed by the respondent before the Labour Officer-cum-Conciliation Officer, wherein para 2, it is admitted in response to demand notice that the services of the petitioner were disengaged during year 2014 due to non availability of work and funds. This contradictory stand reveals that the services of the petitioner were terminated in contravention of the provisions of Section 25-F of the Act. Furthermore, no compensation has been paid for retrenchment. Hon’ble Supreme Court in titled as G.T. Lad and others versus Chemicals and Fibers India Ltd., 1979 AIR(SC) 582 has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. In absence of required cogent and reliable evidence, plea of respondent department is not sustainable and it is held that employer has not complied with the conditions precedent to retrenchment as per Section 25-F Clause (a) and of the Industrial Disputes Act which are mandatory in law.

19. Hon'ble Supreme Court in case, titled as **Anoop Sharma versus Executive Engineer, Public Health Division No. 1, Panipat (Haryana), 2010 5 SCC 497**, has held as under:—

“17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance therewith renders the retrenchment of an employee nullity-State of Bombay v. Hospital Mazdoor Sabha, Bombay Union of Journalists v. State of Bombay State Bank of India v. N. Sundara Money, Santosh Gupta v. State Bank of Patiala Mohan Lal v. Bharat Electronics Ltd., L. Robert D'Souza v. Southern Railway, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, Gammon India Ltd. v. Niranjan Das, Gurmail Singh v. State of Punjab Pramod Jha v. State of Bihar.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated”.

20. Thus, the evidence on record adduced by petitioner does establish that the provisions envisaged under Section 25-F of the Act have been violated by the respondent and therefore his retrenchment/termination of service is illegal. In view of above discussion and legal position highlighted, issue No. 2 is also answered in affirmative.

Issue No. 3 :

21. Petitioner Bittu Ram has mentioned his age as 37 years in his affidavit Ex.PW1/A, as such being a young man, it is presumed that he would not sit home idle during period he was out of work. The petitioner has failed to establish that during the period of his remaining out of services he was not gainfully employed, so, he is not entitled to the back wages. But his break period/fictional breaks is to be counted for the purpose of continuous service in terms of Section 25-B of the Act. This issue is answered accordingly.

Issue No. 4 :

22. In view of positive findings on issues above, the petition is held maintainable. Respondent has not able to establish as to how the petition is not maintainable. Consequently, issued No. 4 is answered in negative against the respondent.

Relief :

23. As a sequel to the findings arrived on the issues framed, the claim petition succeeds in part and same is partly allowed. The intermittent/fictional breaks from January, 2009 till August, 2014 as well final termination in August, 2014 are held to be illegal, improper and unjustified. The break period is ordered to be counted for the purposes of continuous service as well as seniority of the petitioner except back wages. The petitioner is ordered to be reinstated from the date of his illegal termination in August, 2014. Parties are left to bear their own costs. 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. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

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

Ref. No. : 695/2016
Date of Institution : 03-10-2016
Date of Decision : 07-9-2021

Shri Daleep Singh s/o Shri Sridhar through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P.
. *Petitioner.*

Versus

The Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P.
. *Respondent.*

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

For the Petitioner : Sh. I.S. Jaryal, Ld. AR
For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference to the following effect has been received for adjudication from the appropriate Government:

“Whether time to time termination of the services of Shri Daleep Singh s/o Shri Sridhar through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), CHEP Stage-II, Karian P.O. Hardaspura, Tehsil & District Chamba, H.P. during August, 2009 to July, 2014 and finally during July, 2014 by the Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Facts in nutshell as pleaded in the statement of claim by the petitioner are as follows. Petitioner has claimed to be initially engaged by the respondent on muster rolls as a daily waged

beldar/worker in June, 2009 and remained working continuously with intermittent breaks till September, 2014 in Forest Range Upper Chamba. The respondent illegally terminated the services of petitioner several times by passing oral order(s) during the service period by giving fictional/artificial breaks with the intention that petitioner might not complete 240 days continuous service in each calendar year and thus deprived him of the benefits of regularization. Petitioner made several requests to the authorities of respondent to allow him to work continuously without breaks, but in vain. The services of the petitioner were finally terminated in September, 2014 without any reasons and workers junior to him and favourite to respondent were retained on muster rolls continuously and allowed to work for full month. Respondent is alleged to have violated the rules of seniority and principle of 'last come first go' under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served of retrenchment nor one month's wages paid in lieu of notice period. Further, no retrenchment compensation was paid. Action of respondent is alleged as illegal, unjustified, unconstitutional and in violation of Section 25-F of the Act. Petitioner has mentioned the names of 52 workmen who were allegedly retained and newly engaged by the department but no preference/opportunity was given to petitioner. It is also averred that petitioner was not provided work for no fault on his part. Thus alleging gross violation of statutory provisions under Sections 25-B, F, G and H of the Act, he prayed for setting aside oral orders of illegal termination/retrenchment in 2014, reinstatement in service with full back wages, seniority including continuity in service and counting the period of intermittent breaks with consequential benefits.

3. Respondent contested the claim by filing reply making preliminary submissions that no legal and fundamental right of petitioner was violated, as such, the claim petition is not maintainable. Respondent admitted engaging of petitioner during 2009 but asserted him to be casual labourer for seasonal forestry works. It is further averred that petitioner worked intermittently from January, 2009 to December, 2014 and thereafter left the work at his own sweet will. Petitioner is stated to have not completed 240 days in any calendar year. Petitioner did not come to work at his own. No fictional breaks were allegedly given and no junior was retained by the respondent. It was further averred that as the petitioner had not completed 240 days in preceding 12 calendar months and not fulfilled the conditions of Section 25-B of the Act, therefore, there was no need to serve him notice under Section 25-F of the Act. Respondent thus prayed for dismissal of petitioner's claim.

4. Rejoinder was filed by the petitioner denying averments of the reply and reasserting those of the claim petition.

5. On the pleadings of parties, following issues were framed on 11-01-2018:—

1. Whether time to time termination of services of the petitioner by the respondent during August, 2009 to July, 2014 is/was improper and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of petitioner during July, 2014 is/was improper and unjustified? . . .*OPP.*
3. If issue No. 1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of learned Authorized Representative for the petitioner and learned Deputy District Attorney for the respondent were heard and records carefully perused.

8. For the reasons to be recorded hereinafter the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : As per operative part of discussion

Issue No.4 : No

Relief. : Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

10. Petitioner Daleep Singh has stepped into witness box as PW1. He has deposed on oath through his affidavit Ex.PW1/A his entire case as set up in the statement of claim. He has categorically deposed that respondent/department had engaged him in August, 2009 as daily wager in the upper range of Forest Division Chamba and he continuously worked till July, 2014 completing 240 days in each year. Thereafter, respondent department from July, 2014 illegally stopped petitioner's work whereas the workers junior to petitioner were retained on work. Respondent/department from 2009 to 2014 gave fictional breaks so that petitioner could not complete 240 days in a year and for which he was given work for 18 to 20 days as per muster roll despite department having adequate budget and work. The junior workers who were favourite to the department officers were retained for the work. The mandays chart annexed with the written statement is incomplete but the department has shown the petitioner to have worked 252 days in year 2010 from which it is clear that respondent department has violated the provisions of Section 25- B of the Act. Petitioner has given the names of junior workers in his affidavit Ex.PW1/A whose services were retained whereas the department had terminated his service *vide* oral orders in July, 2014. He has also deposed that giving fictional breaks and retaining the junior workers was malafide and unfair labour practice on part of respondent. Notice of one month was not given for retrenchment nor salary for one month in lieu of notice. No retrenchment compensation was paid. Petitioner has prayed for reinstatement from July, 2014 and counting continuity in service from 2009 till July, 2014 as well regularization in service as per five years regularization policy. Further, he has prayed for consequential benefits viz. seniority, regularization and back wages etc.

11. Petitioner has tendered in evidence copies of mandays chart of junior workers Mark-A and Mark-B. In cross-examination, he has denied that work of forest department is seasonal. Voluntarily stated that same continues throughout the year. He has admitted joining work with the department in August, 2009. He denied not regularly going to work. He admitted working till July, 2014. He also admitted that the mandays detail of petitioner provided by the department is correct. He admitted not having completed 240 days in each year. He denied that the department

had not retained junior workers. He also denied Moti Ram and Musarbu Devi not having worked with him. Further denied that department had not engaged the persons mentioned in para no.3 of affidavit.

12. On the other hand, Shri Sanjeev Sharma, Divisional Forest Officer, Chamba stepped into witness box as RW1 and deposed through his affidavit Ex.RW1/A the defence of respondent department as taken up in the reply. He claimed the petitioner to have been engaged during 2009 as a casual labourer for seasonal forestry work. According to him, petitioner intermittently worked *w.e.f.* January, 2009 till July, 2014 and thereafter left the work at his own sweet will. Fictional breaks were denied. No junior was stated to be retained by the respondent. He denied petitioner having been deprived to complete 240 days in each calendar year. As petitioner did not fulfill the conditions of Section 25-B of the Act as such there was no need to serve any notice under Section 25-F of the Act. Thus, he claimed that there was no violation of the Act.

13. RW1 has tendered in evidence copies of mandays chart Ex.RW1/B1 to Ex.RW1/B4. He admitted issuance of muster rolls by Divisional Forest Officer and petitioner having been engaged in August, 2009. He admitted that when department provided work, petitioner came for the same. He admitted that when after 2014 petitioner did not come for work, no notice was issued to him. He also admitted that as per record no retrenchment compensation was paid. He admitted that seniority list of daily wagers at the divisional level is prepared. He also admitted filing of reply Ex.PX in the Labour Office in the case of petitioner. He admitted preparation of seniority list Ex.PY. Mark-A and Mark-B were also admitted as Ex. PZ and Ex.PZ1. He could not depose if Moti Ram, Surinder Kumar and Karam Chand were still working in the department.

14. Later, Authorized Representative Shri I.S. Jaryal tendered in evidence copy of letter Mark-PA and Mark-PB copy of result of departmental screening committee.

15. Though, the respondent denied petitioner having completed 240 days in any year but the mandays chart Ex.RW1/B2 does clearly show that petitioner Daleep Singh worked for 252 days in year 2010. As per mandays chart Ex.RW1/B1 to Ex.RW1/B4 petitioner has worked for 128 days in 2009, 252 days in 2010, 137 days in 2011, 182 days in 2012, 129 days in 2013 and 52 days in the year 2014 upto July. Thus, plea of the respondent that petitioner never completed 240 days is incorrect. Mandays chart Ex.RW1/B1 also clearly shows that petitioner was engaged in August, 2009, when he worked for 25 days. The mandays chart reveals that petitioner was not provided work regularly. Though, he worked from August, 2009 till July, 2014 but why respondent did not allocate him work for more than 240 days in a year has not been satisfactorily explained. The plea of respondent that forest activities were seasonal cannot be accepted because the department has not placed on record any document to prove that the services of petitioner were engaged for seasonal works depending upon availability of the work. Furthermore, in terms of Section 25-A (2) of the Act no decision of the appropriate Government declaring the respondent of seasonal character or work therein being performed intermittently has been alleged.

16. It is also to be noted that as per the result Mark-PB of Departmental Screening Committee for regularization of daily wagers of Chamba Forest Circle, which is not disputed by the respondent, Pawan Kumar at serial No.38 whose date of initial engagement as daily wager is mentioned February, 2011 is shown to have worked 290 days in 2011, 266 days in 2012, 256 days in 2013, 266 days in 2014, 240 days in 2015, 361 days in 2016 and 91 days in 2017. Similarly Nirbla at serial No. 39 who was engaged in January, 2012 has also got work for more than 240 days in the years 2012 to 2016 and 161 days upto June, 2017. How the later inducted daily wagers were allotted so much of work *i.e.* for more than 240 days and not to the petitioner has been explained by the respondent which clearly violates Article 14 and 16 of the Constitution of India. It is also worthwhile to mention that both these daily wagers Pawan Kumar and Nirbla were engaged in the

years 2011 and 2012 respectively *i.e.* much later than the petitioner engaged in 2009 and they are shown to continue till the year 2017 as per Mark-PB whereas the services of the petitioner were terminated in July, 2014. Thus the principle of 'last come first go' engrained in Section 25-G of the Act has been violated. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason, as held by Hon'ble Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116. Certainly, no reason has been assigned for the termination of services of petitioner in July, 2014. Despite, respondent witness Shri Sanjeev Sharma admitting that seniority list of daily wagers is prepared at the divisional level, the overall Divisional Seniority list has not been brought before the Court by the respondent and no explanation for the same has been given. In such circumstances, not providing 240 days of work in a calendar year to the petitioner by the respondent is not justified as no fault is found on part of the petitioner/workman. That being so, it is observed that artificial/fictional breaks were given to petitioner by the respondent which amounts to unfair labour practice as per the Fifth Schedule of the Act. This break period is required to be counted for the purposes of continuous service as envisaged under Section 25-B of the Act, which provides as under:—

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

- (3) 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 authorised 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;
- (4) 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—
 - (b) 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;
 - (b) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (v) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

- (vi) he has been on leave with full wages, earned in the previous years;
- (vii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (viii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The aforementioned Section thus enjoins a duty upon the respondent/employer to provide work atleast for 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. The employer can regulate the working of an employee as per his needs, but in view of spirit engrained in Section 25-B of the Act an employer is duty bound to provide the work for 240 days in a year to the employee/petitioner. Hon'ble Apex Court in Employers In Relation To Digwadih Colliery v. Workmen, AIR 1966 SC 75, has held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. Thus, issue No.1 is answered in affirmative.

18. The petitioner has claimed to have been terminated during July, 2014 without serving one month's retrenchment notice or one month wages in lieu of notice period. Though, respondent has claimed in his reply that petitioner himself did not come for work at his own accord but said plea is contrary to the reply Ex. PX filed by the respondent before the Labour Officer-cum-Conciliation Officer, wherein para 2, it is admitted in response to demand notice that the services of the petitioner were disengaged during year 2014 due to non availability of work and funds. This contradictory stand reveals that the services of the petitioner were terminated in contravention of the provisions of Section 25-F of the Act. Furthermore, no compensation has been paid for retrenchment. Hon'ble Supreme Court in titled as G.T. Lad and others versus Chemicals and Fibers India Ltd., 1979 AIR(SC) 582 has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. In absence of required cogent and reliable evidence plea of respondent department is not sustainable and it is held that employer has not complied with the conditions precedent to retrenchment as per Section 25-F Clause (a) and (c) of the Industrial Disputes Act which are mandatory in law.

19. Hon'ble Supreme Court in case, titled as **Anoop Sharma versus Executive Engineer, Public Health Division No. 1, Panipat (Haryana), 2010 5 SCC 497**, has held as under:—

“17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance therewith renders the retrenchment of an employee nullity-State of Bombay v. Hospital Mazdoor Sabha, Bombay Union of Journalists v. State of Bombay State Bank of India v. N. Sundara Money, Santosh Gupta v. State Bank of Patiala Mohan Lal v. Bharat Electronics Ltd., L. Robert D'Souza v. Southern Railway, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, Gammon India Ltd. v. Niranjan Das, Gurmail Singh v. State of Punjab Pramod Jha v. State of Bihar.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b)

has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

20. Thus, the evidence on record adduced by petitioner does establish that the provisions envisaged under Section 25-F of the Act have been violated by the respondent and therefore his retrenchment/termination of service is illegal. In view of above discussion and legal position highlighted, issue No. 2 is also answered in affirmative.

Issue No. 3 :

21. Petitioner Daleep Singh has mentioned his age as 34 years in his affidavit Ex.PW1/A, as such being a young man, it is presumed that he would not sit home idle during period he was out of work. The petitioner has failed to establish that during the period of his remaining out of services he was not gainfully employed, so, he is not entitled to the back wages. But his break period/ fictional breaks is to be counted for the purpose of continuous service in terms of Section 25-B of the Act. This issue is answered accordingly.

Issue No. 4 :

22. In view of positive findings on issues above, the petition is held maintainable. Respondent has not able to establish as to how the petition is not maintainable. Consequently, issued No. 4 is answered in negative against the respondent.

Relief :

23. As a sequel to the findings arrived on the issues framed, the claim petition succeeds in part and same is partly allowed. The intermittent/fictional breaks from August, 2009 till July, 2014 as well final termination in July, 2014 are held to be illegal, improper and unjustified. The break period is ordered to be counted for the purposes of continuous service as well as seniority of the petitioner except back wages. The petitioner is ordered to be reinstated from the date of his illegal termination in July, 2014. Parties are left to bear their own costs. 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. File after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of September, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 696/2016
Date of Institution : 03-10-2016
Date of Decision : 07-9-2021

Shri Ambreek s/o Shri Lakha, through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P.
..Petitioner.

Versus

The Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P.
..Respondent.

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

For the Petitioner : Sh. I.S. Jaryal, Ld. AR

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference to the following effect has been received for adjudication from the appropriate Government:

“Whether time to time termination of the services of Shri Abreek s/o Shri Lakha through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), CHEP Stage-II, Karian P.O. Hardaspura, Tehsil & District Chamba, H.P. during April, 2000 to August, 2014 and finally during August, 2014 by the Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The facts in brief as pleaded in the statement of claim by the petitioner are that he was initially engaged by the respondent department on muster roll basis as daily waged beldar/workman in the year 1997. He continuously worked with intermittent breaks till August, 2014 with the respondent department. The respondent department illegally terminated the services of petitioner several times by passing oral order(s) during the service period by giving fictional/artificial breaks with the intention that petitioner might not complete criteria of 240 days continuous service in each calendar year. Thus, petitioner has claimed to be deprived of the benefits of regularization for which he made several requests to the authorities of respondent to allow him to work continuously without breaks, but in vain. It is also alleged that the services of the petitioner were finally terminated in August, 2014 without any reasons whereas workers junior to him and favourite to respondent were retained on muster rolls continuously and allowed to work for full month. Respondent department is alleged to have violated statutory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), rules of seniority and principle of ‘last come first go’.

3. It is also averred that when services of petitioner were finally terminated in August, 2014 respondent, neither served one month’s retrenchment notice nor paid any wages in lieu of notice period. No retrenchment compensation was paid. No notice of retrenchment in the prescribed manner was served on the appropriate Government. No prior approval from Government was obtained before terminating the services of petitioner. The actions of respondent in terminating services are alleged to be illegal, unjustified, unconstitutional and in violation of Section 25-F of the Act. Overall divisional level seniority list has not been circulated. Petitioner has claimed that junior workers were retained continuously by the respondent department. It is also averred that

petitioner has never remained closed for work at his own but the department did not provide him work for no fault on his part. As such the period of fictional breaks is claimed to be counted for continuous service as envisaged under Section 25-B of the Act. Petitioner has also claimed regularization in view of judgment Rakesh Kumar vs. State of H.P. & others. Alleging gross violation of statutory provisions of Section 25-B, F, G & H of the Act, he has prayed for setting aside of his illegal termination/retrenchment, reinstatement *w.e.f.* illegal termination along-with full back wages, seniority, counting the period of intermittent breaks towards continuous service and regularization under eight years regularization policy.

4. Respondent contested the claim by filing reply raising preliminary submission of maintainability claiming that no legal and fundamental right of the petitioner has been infringed by the respondent. It is averred that petitioner was engaged in April, 1997 as casual labourer for seasonal forestry works in Kundi Beat in Upper Chamba Range in Chamba Forest Division. Petitioner is stated to have intermittently worked *w.e.f.* 1/1997 to December, 2011. Thereafter he left the work at his own sweet will. Petitioner is stated to have not completed 240 days in each calendar year. It is further averred that the petitioner was never terminated. No fictional breaks were given to him. No junior has been retained by the respondent. It is denied that petitioner has been deprived to complete 240 days in each calendar year. Petitioner is stated to have not fulfilled the conditions of Section 25-B of the Act as such there was no need to serve him notice under Section 25-F of the Act. It is further averred that only those workers were regularized who have fulfilled the regularization criteria as per Government policy. Violations of provisions of the Industrial Disputes Act are denied. Thus, respondent prayed for dismissal of petitioner's claim.

5. Rejoinder was filed by the petitioner denying averments of the reply and reasserting those of the claim petition.

6. On the pleadings of parties, following issues were framed on 11-01-2018:—

1. Whether time to time termination of services of the petitioner by the respondent during April, 2000 to August, 2014 is/was improper and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of petitioner during August, 2014 is/was improper and unjustified? . . .*OPP.*
3. If issue No. 1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

7. Evidence was led by the parties to the lis in support of the issues so framed.

8. Arguments of learned Authorized Representative for the petitioner and learned Deputy District Attorney for the respondent were heard and records carefully perused.

9. For the reasons to be recorded hereinafter the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3	: As per operative part of discussion
Issue No. 4	: No
Relief.	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

11. The pivotal question is whether there was time to time termination of services of petitioner and whether it was improper and unjustified. As per the reference the time to time termination of services were during April, 2000 to August, 2014. However, in the statement of claim, petitioner has alleged intermittent/artificial breaks from 1997 till August, 2014. Section 10 (4) of the Act mandates that where in an order referring an industrial dispute to Labour Court/Industrial Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court/Industrial Tribunal shall confine its adjudication to those points and matters incidental thereto. Since the reference has not been received from the appropriate Government with regard to alleged time to time termination of services of petitioner in the year 1997 onwards, therefore, said pleadings and evidence of the petitioner cannot be looked into being beyond terms of reference. So, the dispute which remains between the parties for adjudication is as to whether artificial/fictional breaks in service were given to the petitioner by the respondent from April, 2000 to August, 2014 and whether they were improper and unjustified.

12. Petitioner has stepped into witness box as PW1 and deposed through his affidavit Ex.PW1/A his entire case as set up in the statement of claim. He categorically deposed that respondent department engaged him in January, 1997 as daily wager for work in Forest Division Chamba and he continuously worked till August, 2014 had working for more than 240 days in each year. The respondent department from August, 2014 stopped giving him work whereas his junior workers were continuously employed for work. Respondent department from 1997 till 2014 had given him fictional breaks with the intention that petitioner did not complete 240 days criteria and on muster rolls he was given work for 18 to 20 days despite availability of adequate budget and work. He has also deposed that despite his requests to the department officers he was given fictional breaks whereas favourite junior workers were retained on work. He also deposed that when his services were terminated junior workers named in para no.3 of his affidavit were retained for work and thus Section 25-G was violated.

13. Petitioner has tendered in evidence mandays charts of alleged junior workers Mark-A to Mark-H later exhibited PZ1 to PZ8, seniority list of alleged junior workers Mark-J/Ex.PY and letter Ex.PW1/B along-with seniority list of daily wagers who were regularized under the eight years regularization policy. He also specifically deposed that when he was illegally retrenched one month's notice was not given nor wages in lieu of one month's notice. No retrenchment compensation was given. No notice was given to the Himachal State nor any reason disclosed as well permission for retrenchment was not obtained from the Government. He thus deposed that he was closed from work for no fault on his part and his period of fictional breaks from 1997 till 2014 requires to be added for continuous service. A joint seniority list at the Divisional level was not notified. He further prayed for his re-engagement, counting of service for fictional breaks and

regularization in view of judgment Rakesh Kumar vs. State of Himachal Pradesh as well consequential benefits of seniority, back wages etc.

14. In cross-examination petitioner has denied that work of forest department was seasonal. Voluntarily stated that work continues throughout the year. He admitted having been engaged in April, 1997 with the department. Denied not coming to work regularly. Admitted working till August, 2014. Denied that work of forest department was on availability of budget and work. Denied coming and going to work at his own. Admitted correct detail provided of his mandays by the department. Admitted having not worked for 240 days in any year. Denied that his juniors were not employed. Also denied that Moti Ram, Musarbu Devi, Kailash Chand, Singhu, Vyas Dev, Paras Ram, Vir Chand, Surender Kumar and Karam Chand had not worked with him. Denied that workers named in para No. 3 of his affidavit had not worked with him. Denied he was not turned out of work. Denied that department had regularized those workers who according to the policy of the State had completed more than 240 days or more.

15. On the other hand, Shri Sanjeev Sharma, Divisional Forest Officer, Chamba has appeared as RW1 and deposed through his affidavit Ex.RW1/A that petitioner was engaged in April, 1997 as casual labourer in Kundi Beat Upper Chamba in Chamba Forest Division. According to him petitioner worked intermittently from 1/1997 to December, 2011 and thereafter left the work at his own will. It is further stated that petitioner has not completed 240 days in each calendar year and he himself did not come for work at his own accord. Further stated that no fictional breaks were given to the petitioner and no junior was retained by respondent. It was also denied that petitioner was deprived to complete 240 days in each calendar year. He also deposed that as petitioner had not fulfilled the conditions of Section 25-B of the Act as such there was no need to serve notice under Section 25-F of the Act. He further tendered in evidence mandays charts Ex.RW1/B1 to Ex.RW1/B4. In cross-examination he admitted that muster rolls are issued by the Divisional Forest Officer. Admitted engagement of petitioner in January, 1997 in the department and that when respondent department gave work to petitioner he used to come for the same. Denied that petitioner was removed in August, 2014. Voluntarily stated that petitioner had left the work. Admitted that when claimant/petitioner did not come for work after 2014 no notice was given. Admitted that as per record no retrenchment compensation was paid. Admitted issuance of seniority list at the Divisional level of daily wagers. Admitted that at the time of engagement and disengagement 'last come first go' principle is followed. Admitted having filed reply Ex.PX in the Labour Office in the case of petitioner. Admitted seniority list Mark-J issued by his department to be read as Ex.PY. Denied that petitioner was not allowed to complete 240 days. Admitted mandays charts Ex.PZ1 to Ex.PZ8 of the department. He could not depose if Kailash Chand, Singhu, Vyas Dev, Paras Ram, Veer Chand, Moti Ram, Surender Kumar, Karam Chand, Musarbu Devi still working in the department. Admitted that Kailash Chand, Singhu and Paras Ram reflected in Ex.PW1/B have been regularized.

16. Mandays chart Ex.RW1/B1 of petitioner reveals that he was engaged in 1997 and he worked for 30 days firstly in April, 1997 and worked for 177 days in year 1997. He continued to work during years 1998 to August, 2014. As per the mandays charts Ex.RW1/B1 to Ex.RW1/B6 he has worked intermittently and never shown to have worked for more than 240 days in a year. The mandays chart Ex.PZ1 of alleged junior worker Kailash Chand shows that he was engaged in the year 2000 and had completed 285 days in year 2000, 291 days in 2001, 275 days in 2002, 267 days in 2003, 247 days in 2004, 274 days in 2005, 306 days in 2006, 308 days in 2007, 285 days in 2008, 278 days in 2009, 250 days in 2010 and 262 days in 2011. Thus, when work was available for more than 240 days to alleged worker Kailash Chand why it was not given in the same proportion to the petitioner has not been explained and the respondent's plea that petitioner did not come for work at his own cannot be accepted as respondent has not issued any notice to petitioner and not brought any evidence on record calling for the reasons for alleged absention from work at

his own by the petitioner. Mandays chart Ex.PZ2, PZ3, PZ4 of alleged junior workers also reveal that work for 240 days was allocated to such daily wagers. The time to time termination of the services of petitioner/fictional breaks given to him and allowing his juniors to work and complete 240 days in each calendar year violates the Rule of 'last come first go' envisaged under Section 25-G of the Act as no tangible reason has been assigned for the same. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason, as held by Hon'ble Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116. Certainly, no reason has been assigned for the termination of the services of petitioner in August, 2014. Despite, respondent witness Shri Sanjeev Sharma admitting that seniority list of daily wagers is prepared at the divisional level, the overall Divisional Seniority list has not been brought before the Court by the respondent and no explanation for the same has been given. In such circumstances, not providing 240 days of work in a calendar year to the petitioner by the respondent is not justified as no fault is found on part of the petitioner/workman. That being so, it is observed that artificial/fictional breaks were given to petitioner by the respondent which amounts to unfair labour practice as per the Fifth Schedule of the Act. This break period is required to be counted for the purposes of continuous service as envisaged under Section 25-B of the Act, which provides as under:—

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

- (5) 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 authorised 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;
- (6) 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-
- (c) 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;
- (b) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (ix) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (x) he has been on leave with full wages, earned in the previous years;
- (xi) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The aforementioned Section thus enjoins a duty upon the respondent/employer to provide work atleast for 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. The employer can regulate the working of an employee as per his needs, but in view of spirit engrained in Section 25-B of the Act an employer is duty bound to provide the work for 240 days in a year to the employee/petitioner. Hon'ble Apex Court in Employers In Relation To Digwadih Colliery v. Their Workmen, AIR 1966 SC 75, has held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into continuous service for one complete year.

18. The defence of respondent that petitioner was engaged for seasonal work as and when available subject to the availability of budget, cannot be accepted as respondent has not placed on record any document showing that petitioner was employed for seasonal forestry works subject to the availability of funds and work. There is also not an iota of evidence on record to show that forest department has been declared a seasonal industry as required under the law. Consequently, for computing the continuous service, notional breaks of service cannot be ignored. Thus, the time to time termination of the services/fictional breaks given to the petitioner by respondent during April, 2000 to August, 2014 are held improper and unjustified. Thus, issue No. 1 is answered in affirmative.

19. Coming to the second important aspect of the matter *i.e.* final termination of the services of the petitioner as per reference in August, 2014, it is observed that petitioner has specifically deposed that in August, 2014 respondent department has terminated the services of petitioner through oral order(s) and retained junior workers. Petitioner's claim is that without serving one month's retrenchment notice or one month wages in lieu of notice period, he has been retrenched. Though, respondent has claimed in his reply that petitioner himself did not come for work at his own accord but said plea is contrary to the reply Ex. PX filed by the respondent before the Labour Officer-*cum*-Conciliation Officer, wherein para 2, it is admitted in response to demand notice that the services of the petitioner were disengaged during year 2014 due to non availability of work and funds. This contradictory stand reveals that the services of the petitioner were terminated in contravention of the provisions of Section 25-F of the Act. Furthermore, no compensation has been paid for retrenchment.

20. Hon'ble Supreme Court in case, titled as **Anoop Sharma versus Executive Engineer, Public Health Division No. 1, Panipat (Haryana), 2010 5 SCC 497**, has held as under:—

“17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance therewith renders the retrenchment of an employee nullity-State of Bombay v. Hospital Mazdoor Sabha, Bombay Union of Journalists v. State of Bombay State Bank of India v. N. Sundara Money, Santosh Gupta v. State Bank of Patiala Mohan Lal v. Bharat

Electronics Ltd., L. Robert D'Souza v. Southern Railway, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, Gammon India Ltd. v. Niranjana Das, Gurmail Singh v. State of Punjab Pramod Jha v. State of Bihar.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/ engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated”.

21. So far the plea of abandonment of work by petitioner of his own free will and volition is concerned same is not proved by the respondent. If at all the petitioner absented from work why respondent was not issued any show-cause notice has not been explained. Thus this plea of abandonment cannot be accepted. Hon'ble Supreme Court in case titled G.T. Lad and others versus Chemicals and Fibers India Ltd., 1979 AIR(SC) 582 has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. In absence of required cogent and reliable evidence plea of respondent department is not sustainable and it is held that employer has not complied with the conditions precedent to retrenchment as per Section 25-F Clause (a) and (c) of the Industrial Disputes Act which are mandatory in law.

22. Thus, the evidence on record adduced by petitioner does establish that the provisions envisaged under Section 25-F of the Act has been violated by the respondent and therefore his retrenchment/termination of service is illegal. In view of above discussion and legal position highlighted, issue no.2 is also answered in affirmative.

Issue No. 3 :

23. Petitioner Ambreek has mentioned his age as 46 years in his affidavit Ex.PW1/A. A man of 46 years of age cannot be presumed to sit idle at home during the period he was out of work. Further, he has admitted that he has land and does the agricultural work. In such circumstances, petitioner has not established that he was not gainfully employed during his break period, so, he is not entitled to the back wages. But his break period is to be counted for the purpose of continuous service as well as seniority, except back wages. This issue is answered accordingly.

Issue No. 4 :

24. In view of positive findings on issues above, the petition is held maintainable. Respondent has not able to establish as to how the petition is not maintainable. Consequently, issued No. 4 is answered in negative against the respondent.

Relief :

25. As a sequel to the findings arrived on the issues framed, the claim petition succeeds in part and same is partly allowed. The intermittent/fictional breaks from April, 2000 till August, 2014 as well final termination in August, 2014 are held to be illegal, improper and unjustified. The break period is ordered to be counted for the purposes of continuous service as well as seniority of the petitioner **except back wages**. The petitioner is ordered to be reinstated from the date of his

illegal termination in August, 2014. Parties are left to bear their own costs. 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. File after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of September, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant:—Sh. Rajneesh Singh s/o Sh. Kamal Singh, r/o Vill. Saloh, Sub Tehsil Ispur, District Una, H.P.

Respondent(s):— (i) The Principal, D.A.V. Centenary Public School Una, District Una, H.P.
(ii) Chairman, D.A.V. Centenary Public School, Una, District Una, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala: 487/2016

Present:—

Applicant: Sh. Rajat Chaudhary, Ld. Adv.

Respondent(s) : Sh. Mukul Vaid, Ld. Vice Adv.

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

Learned counsel for the parties have submitted at bar that parties have compromised the present dispute and Award may kindly be passed in view of the statements recorded on 06-9-2021. Shri Rajneesh Singh/claimant vide separate statement recorded on 6-9-2021 has deposed on having compromised the present matter with the respondents. He deposed that as he is suffering from cancer, he does not intend to rejoin his services. As part of compromise, the respondents have agreed to release his provident fund within a month from 6-9-2021 as also provide some financial help on humanitarian grounds. In view of same, Shri Rajneesh Singh does not press his claim for re-engagement in service as also has no claim apart from the above.

Sh. Atul Mahajan, Principal, DAV, also vide separate statement deposed after hearing and reading the statement of Sh. Rajneesh Singh petitioner that he agrees to the same.

In view of the aforementioned statements, the present reference is disposed of as compromised by ordering that respondent shall release the amount of provident fund in favour of petitioner and also provide some financial help on humanitarian ground to the claimant within a month from 06-9-2021 as agreed by the parties.

The statements aforementioned recorded on 6-9-2021 shall form part of this Award. The file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member
(Rashmi)

Judicial Officer
(Arvind Malhotra)

Announced:

Date: 11-09-2021

**IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No.: 38/2018
Date of Institution: 19-4-2018
Date of Decision: 24-9-2021

Shri Chuni Lal s/o Shri Amar Singh, r/o Village Jhamadi, P.O. Rohanda, District Mandi,
H.P. *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Divison, Sunder Nagar, District Mandi, H.P.
. *Respondent.*

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

For the Petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether time to time termination of daily wages services of the claimant Shri Chuni Lal s/o Shri Amar Singh, r/o Village Jhamadi, P.O. Rohanda, District Mandi, H.P. during July,

1999 to November, 2016 (as alleged by the workman *vide* demand notice dated 26-03-2017) by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Facts in nutshell as pleaded in the statement of claim are to the effect that petitioner was engaged as daily waged beldar by Forest Division Suket, District Mandi, H.P. under Jai Devi Forest Range in 1999 and petitioner is working as such. Petitioner has been discharging his duty sincerely however department despite sufficiency of funds and work has given time to time artificial/fictional breaks to the petitioner and engaged new recruits illegally in violation of rules that too without any written notice. Petitioner figures at serial No. 50 in the seniority list maintained by the department with his date of joining as July, 1999. Petitioner had filed Civil Writ Petition No. 4467 of 2009 claiming grant of work charge status on completion of 10 years continuous daily rated service with the department. The said writ petition was disposed of by the Hon'ble High Court of H.P. with the observations that department to consider the case of petitioner for work charge status in accordance with the latest scheme guidelines. The respondent decided the matter vide order dated 14-6-2010 and held the petitioner not having worked with the department more than the days shown in mandays chart, as such, claim of petitioner was not maintainable for grant of work charge status. It is further alleged by petitioner that the legal maxim of 'first come last go' has been violated which is substantiated from the fact that in the seniority list and screening list for regularization of daily rated beldar there are names of persons who were much junior to the petitioner namely Shri Baldev s/o Sh. Panna Lal. Fictional breaks are stated to be breach of Articles 14 and 16 of Constitution of India. Thus, petitioner prayed for counting the fictional breaks for continuity of service and seniority from July, 1999 alongwith back wages, past service benefits and compensation.

3. Respondent contested the claim by filing reply raising preliminary submission that no legal and fundamental right of the petitioner has been infringed by the respondent and as such claim petition is not maintainable. On merits, it is submitted that petitioner was engaged as daily waged beldar *w.e.f.* July, 1999, who is stated to have worked intermittently. Petitioner is stated to have not regularly worked with the respondent for 240 days in each calendar year as per the mandays chart. Respondent department had not given fictional breaks to the petitioner. It was averred that petitioner used to leave the work as per his own sweet will. The allegations with regard to termination of services are denied. It is further submitted that representation of petitioner was considered as per direction of Hon'ble Court and rightly rejected vide office order dated 14-6-2010. Respondent claimed to have regularized only those daily wagers who had completed criteria for regularization as per the Government policy. It is further averred that petitioner had not completed 240 days in the preceding twelve calendar months and did not fulfill the condition of Section 25-B of the Act and as such there was no need to serve notice under Section 25-F of the Act. It was further averred that petitioner has gainfully employed himself as agriculturist. Thus, respondent prayed for dismissal of petitioner's claim.

4. Rejoinder was filed by the petitioner denying contents of the reply and reasserting those of the claim petition.

5. On the pleadings of parties, following issues were framed on 21.6.2019:—

1. Whether time to time termination of services of the petitioner during July, 1999 to November, 2016 by the respondent is/was illegal and unjustified, as alleged? . . . *OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP.*

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

Relief.

6. Evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard and records carefully perused.

8. For the reasons to be recorded hereinafter the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : As per operative part of discussion

Issue No. 3 : No

Relief. : Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

10. Petitioner Shri Chuni Lal has stepped into the witness box as PW1. He has deposed his entire case as set up in the statement of claim, through his sworn affidavit Ex.PW1/A. He categorically deposed of having been engaged as daily waged beldar by Forest Division, Suket, in the year 1999 and he is working as such. The department despite sufficiency of funds and work gave time to time artificial/fictional breaks to petitioner and engaged new recruits illegally in violation of the rules without any written notice. The fictional breaks are stated to be in violation of law and against the maxim of 'first come last go' as much junior to petitioner Shri Baldev s/o Sh. Panna Lal stands regularized in the year 2016 showing him to have completed 240 days in each calendar year. The fictional breaks are also stated to be in breach of Articles 14 and 16 of the Constitution of India. As a result of which, legal rights of petitioner have been prejudiced. Thus, he prayed for counting the fictional breaks to his continuous service and seniority from 1999 along-with back wages, past service benefits etc. He tendered in evidence copy of order dated 17-12-2009 Ex.PW1/B of Hon'ble High Court of H.P. whereby in his civil writ petition Hon'ble High Court had directed the respondent to consider the case of petitioner for conferring work charge status according to the scheme/guidelines, copy of order dated 14.6.2010 Ex.PW1/C whereby the Conservator of Forests concluded that claim of petitioner in CWP No.4467 of 2009 was incorrect, unsubstantiated and therefore petitioner could not be granted work charge status/regular status, copy of letter Ex.PW1/D regarding regularization of daily waged workers/contingent paid workers, copy of screening report Ex.PW1/E, copy of seniority list Ex.PW1/F and copy of demand notice Ex.PW1/G.

11. In cross-examination he stated working in nursery, plantation, fire extinguishing in jungles. He admitted payment of salary by the department. He denied that work of the department was seasonal. Also denied not having continuously worked for 240 days. He further denied of coming and going out of work at his own accord. Denied that he had not completed 240 days in any

year as per mandays chart. Admitted that department as per orders of Hon'ble High Court considered the record and found him not having continuously worked for 240 days therefore was held not entitled for regularization.

12. Per contra, Shri Subhash Chand Prashar, Divisional Forest Officer, Suket Forest Division, stepped into witness box as RW1 and deposed the defence of respondent vide his affidavit Ex.RW1/A. He denied department having given fictional breaks to the petitioner. Further deposed that the representation of petitioner was rightly rejected vide order dated 14.6.2010. Also deposed petitioner having not worked regularly with respondent for 240 days in each calendar year. He deposed that as petitioner had not completed 240 days in the preceding twelve calendar months he does not fulfill the condition of the provisions of Section 25-B of the Act and as such there was no need to serve him notice under Section 25-F of the Act. Thus, he prayed for dismissal of petitioner's claim. He also tendered in evidence copy of mandays chart Ex.RW1/B of petitioner Shri Chuni Lal, copy of circular/letter Ex.RW1/C1, circular Ex.RW1/C2 regarding hiring of labourers in forest circle prescribing tendering of afforestation work as per Financial Rules 2009, copy of office order dated 14-6-2010 Ex.RW1/D rejecting the claim of petitioner holding him not entitled for work charge/regular status.

13. In cross-examination RW1 admitted the name of petitioner mentioned at serial No. 50 in seniority list Ex.PW1/F. He also admitted that Shri Baldev s/o Shri Panna Lal as per record at serial No.109, who was engaged on 1-1-2007, stands regularized. He denied giving fictional breaks despite petitioner working continuously. Voluntarily stated he used to come in between because their work was seasonal. He further stated that the department had not produced any record that notice was issued to the petitioner on his leaving the work. He could not depose if about 70 junior workers have been regularized.

14. The mandays chart Ex.RW1/B shows petitioner Shri Chuni Lal to have been engaged in 1999 and working 57 days in 1999, 39 days in 2000, 116 days in 2001, 199 days in 2002, 0 day in 2003, 198 days in 2004, 136 days in 2005, 211 days in 2006, 177 days in 2007, 218 days in 2008, 236 days in 2009, 81 days in 2010, 176 days in 2011, 199 days in 2012, 117 days in 2013, 145 days in 2014, 125 days in 2015 and 133 days in 2016. Thus, mandays chart does show that though petitioner was engaged in 1999 and remained engaged upto 2016, he had not completed 240 days in each year but he continues to be engaged by the department as deposed by petitioner Chuni Lal and not denied by the respondent. The seniority list Ex. PW1/F does mention petitioner to have been engaged in July, 1999 and he figures at serial No. 50, which is admitted by RW1. Further, Shri Baldev s/o Shri Panna Lal who was engaged on 1-1-2007 figures at serial No. 109 and has been admitted to be regularized by RW1. Further, RW1 has admitted that for regularization the basic criteria is mentioning of name in seniority list and continuous working of 240 days. Thus, when Shri Baldev s/o Shri Panna Lal junior worker to petitioner stands regularized on completion of 240 days in each calendar year, why the work in same proportion was not given to petitioner has not been satisfactorily explained by the respondent. The defence of respondent department that the forest work was seasonal cannot be accepted for the reason that no document has been brought on record by respondent evidencing that the forestry work is seasonal or petitioner was employed for seasonal forestry work. There is not an iota of evidence on record to show that the forest department has been declared as seasonal industry as required under the law. The defence of respondent that petitioner himself used to leave the work at his own sweet will or abandonment of work is also not tenable. The plea of abandonment of work by petitioner at his own free will and volition is not proved by the respondent. If at all petitioner absented from work why respondent has not issued any show cause notice to the petitioner has not been explained. Hon'ble Apex Court in G.T. Lad and others versus Chemicals and Fibers India Ltd., 1979 AIR(SC) 582 has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer.

15. Since work for 240 days in each calendar year has not been provided by the respondent to the petitioner for no fault on part of petitioner and at the same time engaging Shri Baldev s/o Shri Panna Lal on 1-1-2007 and regularizing him on completion of 240 days, there has been violation of rule 'last come first go' envisaged under Section 25-G of the Act as no tangible reason has been assigned for the same. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason, as held by Hon'ble Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116. The time to time termination of the services of petitioner, which are artificial/fictional breaks amount to unfair labour practice in terms of the Fifth Schedule of the Act. This break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act which provides as under:

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

(7) 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 authorised 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;

(8) 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—

(d) 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;

(b) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(xiii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xiv) he has been on leave with full wages, earned in the previous years;

(xv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(xvi) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

16. The aforementioned Section thus enjoins a duty upon the respondent/employer to provide work atleast for 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. The employer can regulate the working of an employee as per his needs, but in view of spirit engrained in Section 25-B of the Act an employer is duty bound to provide the work for 240 days in a year to the employee/petitioner. Hon'ble Apex Court in Employers In Relation To Digwadih Colliery v. Their Workmen, AIR 1966 SC 75, has held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. Thus, time to time termination of the services/fictional breaks given to the petitioner during July, 1999 to November, 2016 are held to be illegal and unjustified. Issue No.1 is accordingly decided in affirmative.

17. Petitioner Shri Chuni Lal has mentioned his age as 53 years in his affidavit Ex.PW1/A sworn on 21st August, 2019 meaning thereby he was about 33 years old in 1999. A man of 33 years of age cannot be presumed to sit idle at home during period he was out of work with respondent. He has admitted that having land for agriculture. In such circumstances, petitioner has not established that he was not gainfully employed during his break period, so, he is not entitled to back wages. However, his break period is to be counted for the purpose of continuous service as well as seniority except back wages. Issue no.2 is accordingly decided.

Issue No. 3 :

18. In view of positive findings on issues above, the petition is held maintainable. Respondent has not able to establish as to how the petition is not maintainable. Consequently, issued No. 3 is answered in negative against the respondent.

Relief :

19. As a sequel to the findings arrived on the issues framed, the claim petition succeeds in part and same is partly allowed. The time to time termination of services of petitioner/fictional breaks from July, 1999 till November, 2016 are held to be illegal and unjustified. The break period is ordered to be counted for the purposes of continuous service as well as seniority of the petitioner **except back wages**. Parties are left to bear their own costs. 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. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of September, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref No.: 39/2018
Date of Institution: 19-4-2018

Date of Decision:

24-9-2021

Shri Rajender Kumar s/o Shri Bhup Singh, r/o Village & P.O. Badhu, District Mandi, H.P.
..Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
..Respondent.

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

For the Petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether time to time termination of daily wages services of the claimant Shri Rajender Kumar s/o Shri Bhup Singh, r/o Village & P.O. Badhu, District Mandi, H.P. during August, 2000 to August, 2016 (as alleged by the workman *vide* demand notice dated 26-03-2017) by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Facts in nutshell as pleaded in the statement of claim are to the effect that petitioner was engaged as daily waged beldar by Forest Division Suket, District Mandi, H.P. under Jai Devi Forest Range in 2000 and petitioner is working as such. Petitioner has been discharging his duty sincerely however department despite sufficiency of funds and work has given time to time artificial/fictional breaks to the petitioner and engaged new recruits illegally in violation of rules that too without any written notice. Petitioner figures at serial No. 70 in the seniority list maintained by the department with his date of joining as August, 2000. Petitioner had filed Civil Writ Petition No. 4467 of 2009 claiming grant of work charge status on completion of 10 years continuous daily rated service with the department. The said writ petition was disposed of by the Hon'ble High Court of H.P. with the observations that department to consider the case of petitioner for work charge status in accordance with the latest scheme guidelines. The respondent decided the matter *vide* order dated 14-6-2010 and held the petitioner not having worked with the department more than the days shown in mandays chart, as such, claim of petitioner was not maintainable for grant of work charge status. It is further alleged by petitioner that the legal maxim of 'first come last go' has been violated which is substantiated from the fact that in the seniority list and screening list for regularization of daily rated beldar there are names of persons who were much junior to the petitioner namely Shri Baldev s/o Sh. Panna Lal. Fictional breaks are stated to be breach of Articles 14 and 16 of Constitution of India. Thus, petitioner prayed for counting the fictional breaks for continuity of service and seniority from August, 2000 alongwith back wages, past service benefits and compensation.

3. Respondent contested the claim by filing reply raising preliminary submission that no legal and fundamental right of the petitioner has been infringed by the respondent and as such claim petition is not maintainable. On merits, it is submitted that petitioner was engaged as daily waged beldar *w.e.f.* August, 2000, who is stated to have worked intermittently. Petitioner is stated to have not regularly worked with the respondent for 240 days in each calendar year as per the mandays chart. Respondent department had not given fictional breaks to the petitioner. It was averred that petitioner used to leave the work as per his own sweet will. The allegations with regard to termination of services are denied. It is further submitted that representation of petitioner was considered as per direction of Hon'ble Court and rightly rejected *vide* office order dated 14-6-2010. Respondent claimed to have regularized only those daily wagers who had completed criteria for regularization as per the Government policy. It is further averred that petitioner had not completed 240 days in the preceding twelve calendar months and did not fulfill the condition of Section 25-B of the Act and as such there was no need to serve notice under Section 25-F of the Act. It was further averred that petitioner has gainfully employed himself as agriculturist. Thus, respondent prayed for dismissal of petitioner's claim.

4. Rejoinder was filed by the petitioner denying contents of the reply and reasserting those of the claim petition.

5. On the pleadings of parties, following issues were framed on 21.6.2019:—

1. Whether time to time termination of services of the petitioner during August, 2000 to August, 2016 by the respondent is/was illegal and unjustified, as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.

Relief.

6. Evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard and records carefully perused.

8. For the reasons to be recorded hereinafter the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : As per operative part of discussion

Issue No. 3 : No

Relief. : Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

10. Petitioner Shri Rajender Kumar has stepped into the witness box as PW1. He has deposed his entire case as set up in the statement of claim, through his sworn affidavit Ex.PW1/A. He categorically deposed of having been engaged as daily waged beldar by Forest Division, Suket, in the year 2000 and he is working as such. The department despite sufficiency of funds and work gave time to time artificial/fictional breaks to petitioner and engaged new recruits illegally in violation of the rules without any written notice. The fictional breaks are stated to be in violation of law and against the maxim of 'first come last go' as much junior to petitioner Shri Baldev s/o Sh. Panna Lal stands regularized in the year 2016 showing him to have completed 240 days in each calendar year. The fictional breaks are also stated to be in breach of Articles 14 and 16 of the Constitution of India. As a result of which, legal rights of petitioner have been prejudiced. Thus, he prayed for counting the fictional breaks to his continuous service and seniority from August, 2000 alongwith back wages, past service benefits etc. He tendered in evidence copy of order dated 17-12-2009 Ex.PW1/B of Hon'ble High Court of H.P. whereby in his civil writ petition Hon'ble High Court had directed the respondent to consider the case of petitioner for conferring work charge status according to the scheme/guidelines, copy of order dated 14.6.2010 Ex.PW1/C whereby the Conservator of Forests concluded that claim of petitioner in CWP No.4467 of 2009 was incorrect, unsubstantiated and therefore petitioner could not be granted work charge status/regular status, copy of letter Ex.PW1/D regarding regularization of daily waged workers/contingent paid workers, copy of screening report Ex.PW1/E, copy of seniority list Ex.PW1/F and copy of demand notice Ex.PW1/G.

11. In cross-examination petitioner stated that he is posted in department as Chowkidar. He admitted payment of salary by the department. He admitted that as per Government Notification all the works had been done through tender. Further, he admitted that department kept them as per work and season. Voluntarily stated department had been wrongly removing him from work time to time. He denied that work of the department was seasonal. He denied not having continuously worked for 240 days. He further denied of coming and going out of work at his own accord. He admitted that 240 days are required to be completed every year for regularization. Denied that he had not completed 240 days in any year as per mandays chart. Admitted that department as per orders of Hon'ble High Court had considered his case. He admitted that the department as per record for not completing 240 days did not find petitioner entitled for regular status.

12. Per contra, Shri Subhash Chand Prashar, Divisional Forest Officer, Suket Forest Division, stepped into witness box as RW1 and deposed the defence of respondent vide his affidavit Ex.RW1/A. He denied department having given fictional breaks to the petitioner. Further deposed that the representation of petitioner was rightly rejected *vide* order dated 14-6-2010. Also deposed petitioner having not worked regularly with respondent for 240 days in each calendar year. He deposed that as petitioner had not completed 240 days in the preceding twelve calendar months he does not fulfill the condition of the provisions of Section 25-B of the Act and as such there was no need to serve him notice under Section 25-F of the Act. Thus, he prayed for dismissal of petitioner's claim. He also tendered in evidence copy of mandays chart Ex.RW1/B of petitioner Shri Rajender Kumar, copy of circular/letter Ex.RW1/C1, circular Ex.RW1/C2 regarding hiring of labourers in forest circle prescribing tendering of afforestation work as per Financial Rules 2009, copy of office order dated 14-6-2010 Ex.RW1/D rejecting the claim of petitioner, holding him not entitled for work charge/regular status.

13. In cross-examination RW1 admitted the name of petitioner mentioned at serial No.70 in seniority list Ex.PW1/F. He also admitted that Shri Baldev s/o Shri Panna Lal as per record at serial No.109, who was engaged on 1-1-2007, stands regularized. He denied giving fictional breaks despite petitioner working continuously. Voluntarily stated he used to come in between because their work was seasonal. He further stated that the department had not produced any record that notice was issued to the petitioner on his leaving the work. He could not depose if about 70 junior

workers have been regularized because of their continuously working and petitioner coming to work intermittently. He further denied that days of petitioner have been deliberately shown less. He also denied that petitioner would have been regularized in the year 2009 itself but was not because fictional breaks. He could not depose if petitioner was still working in the department.

14. The mandays chart Ex.RW1/B shows petitioner Shri Rajender Kumar to have been engaged in 2000 and working 10 days in 2000, 0 day in 2001, 120 days in 2002, 165 days in 2003, 200 days in 2004, 234 days in 2005, 228 days in 2006, 233 days in 2007, 170 days in 2008, 130 days in 2009, 218 days in 2010, 196 days in 2011, 141 days in 2012, 42 days in 2013, 63 days in 2014, 178 days in 2015 and 63 days in 2016. Thus, mandays chart does show that though petitioner was engaged in 2000 and remained engaged upto 2016, he had not completed 240 days in each year but he continues to be engaged by the department as deposed by petitioner Rajender Kumar and not denied by the respondent. The seniority list Ex. PW1/F does mention petitioner to have been engaged in August, 2000 and he figures at serial no.70, which is admitted by RW1. Further, Shri Baldev s/o Shri Panna Lal who was engaged on 1-1-2007, figures at serial No. 109 and has been admitted to be regularized by RW1. Further, RW1 has admitted that for regularization the basic criteria is mentioning of name in seniority list and continuous working of 240 days. Thus, when Shri Baldev s/o Shri Panna Lal junior worker to petitioner stands regularized on completion of 240 days in each calendar year, why the work in same proportion was not given to petitioner has not been satisfactorily explained by the respondent. The defence of respondent department that the forest work was seasonal cannot be accepted for the reason that no document has been brought on record by respondent evidencing that the forestry work is seasonal or petitioner was employed for seasonal forestry work. There is not an iota of evidence on record to show that the forest department has been declared as seasonal industry as required under the law. The defence of respondent that petitioner himself used to leave the work at his own sweet will or abandonment of work is also not tenable. The plea of abandonment of work by petitioner at his own free will and volition is not proved by the respondent. If at all petitioner absented from work why respondent has not issued any show cause notice to the petitioner has not been explained. Hon'ble Apex Court in G.T. Lad and others versus Chemicals and Fibers India Ltd., 1979 AIR(SC) 582 has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer.

15. Since work for 240 days in each calendar year has not been provided by the respondent to the petitioner for no fault on part of petitioner and at the same time engaging Shri Baldev s/o Shri Panna Lal on 1-1-2007 and regularizing him on completion of 240 days, there has been violation of rule 'last come first go' envisaged under Section 25-G of the Act as no tangible reason has been assigned for the same. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason, as held by Hon'ble Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116. The time to time termination of the services of petitioner, which are artificial/fictional breaks, amount to unfair labour practice in terms of the Fifth Schedule of the Act. This break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act, which provides as under:

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

- (9) 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 authorised 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;

- (10) 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.—
- (e) 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;
- (b) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

*Explanation:—*For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (xvii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (xviii) he has been on leave with full wages, earned in the previous years;
- (xix) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xx) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

16. The aforementioned Section thus enjoins a duty upon the respondent/employer to provide work atleast for 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. The employer can regulate the working of an employee as per his needs, but in view of spirit engrained in Section 25-B of the Act an employer is duty bound to provide the work for 240 days in a year to the employee/petitioner. Hon’ble Apex Court in Employers In Relation To Digwadih Colliery v. Their Workmen, AIR 1966 SC 75, has held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. Thus, time to time termination of the services/fictional breaks given to the petitioner during August, 2000 to August, 2016 are held to be illegal and unjustified. Issue no.1 is accordingly decided in affirmative.

17. Petitioner Shri Rajender Kumar has mentioned his age as 47 years in his affidavit Ex.PW1/A sworn on 21st August, 2019 meaning thereby he was about 27 years old in 2000. A man of 27 years of age cannot be presumed to sit idle at home during period he was out of work with respondent. He has admitted having land for agriculture. In such circumstances, petitioner has not

established that he was not gainfully employed during his break period, so, he is not entitled to back wages. However, his break period is to be counted for the purpose of continuous service as well as seniority except back wages. Issue No. 2 is accordingly decided.

Issue No. 3 :

18. In view of positive findings on issues above, the petition is held maintainable. Respondent has not able to establish as to how the petition is not maintainable. Consequently, issued No. 3 is answered in negative against the respondent.

Relief :

19. As a sequel to the findings arrived on the issues framed, the claim petition succeeds in part and same is partly allowed. The time to time termination of services of petitioner/fictional breaks from August, 2000 till August, 2016 are held to be illegal and unjustified. The break period is ordered to be counted for the purposes of continuous service as well as seniority of the petitioner except back wages. Parties are left to bear their own costs. 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. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of September, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No.:	201/2017
Date of Institution:	10.10.2017
Date of Decision:	24.9.2021

Shri Dorje Angrup s/o Shri Norbu Ram, r/o Village Changut, P.O. Karpot, Tehsil Udaipur,
District Lahaul & Spiti, H.P. *. .Petitioner.*

Versus

Divisional Forest Officer, Lahaul Forest Division, Keylong, District Lahaul & Spiti, H.P.
. .Respondent.

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

For the Petitioner : Sh. Chetan Viraj Sharma, Ld. Adv.

For the Respondent

: Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether time to time termination of the services of Shri Dorje Angrup s/o Shri Norbu Ram, r/o Village Changut, P.O. Karpat, Tehsil Udaipur, District Lahaul & Spiti, H.P. during April, 1991 to year, 2016 by the Divisional Forest Officer, Lahaul Forest Division, Keylong, District Lahaul & Spiti, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 and as per policy of State Government after completing 8 years of daily wages services in the department and not to regular/consider his daily wages services for regularization is legal and justified? If not, what amount of back wages, seniority, past service benefits and other compensation etc. the claimant is entitled to from the aforesaid employer under the Act *ibid*”.

2. Shorn of unnecessary details, facts as pleaded in the statement of claim in brief are as follows. Petitioner has claimed to be engaged as daily waged forest worker in Chimrut nursery under B.O. and Range Office Udaipur Forest Division, Lahaul & Spiti *w.e.f.* July, 1984 and worked as such till April, 1991. Thereafter, petitioner is working at Churput nursery *w.e.f.* April, 1991 till date under the B.O. and Range Office, Udaipur, DFO Lahaul & Spiti, H.P. The respondent department had issued muster rolls to the petitioner. Respondent department with malafide intention and ulterior motive gave intentional fictional breaks to the petitioner so that petitioner could not complete 160 days in each calendar year from 1984 till date with the intention not to regularize the services of the petitioner. Petitioner has claimed to have worked with respondent department for more than 34 years and continuously working. Respondent department has not shown full working days of petitioner in the mandays just to frustrate his rightful claim. The services of juniors have been regularized on completion of 160 days. No show cause notice or inquiry for alleged absence has been conducted by respondent department. Fictional breaks given by respondent are illegal, arbitrary and in violation of mandatory provisions including Sections 25-G, H and N of the Act. Petitioner has claimed to have completed 160 days in each calendar year under hard/tribal area where the same are required as per the notification of State Government. The time to time termination of services are without assigning any reason. Junior persons to petitioner namely Yagia Chand, Shesh Ram, Rai Chand, Khem Raj, Roop Chand, Jai Ram, Bahadur Singh, Son Dei, Prem Chand, Tari Devi, Raj Kumar, Jeet Ram, Ratti Devi and Dev Raj have been allowed to work for 160 days in each calendar year and regularized after completion of eight years of service ignoring the petitioner and thus the respondent has violated the provisions of 'last come first go'. Despite several representations against fictional breaks, respondent did not pay any heed to them. Petitioner has thus prayed for quashing and setting aside the verbal termination/fictional breaks given by the respondent department and to hold the services of petitioner continuous from initial engagement with all consequential benefits, seniority and continuity etc.

4. Respondent contested the claim by filing reply raising preliminary submissions qua maintainability, petitioner not coming with clean hands, suppressing true and material facts and petitioner employed as daily wagger on casual basis during year 1995 for carrying out seasonal forestry works. Further that petitioner has not completed eight years of continuous services with minimum of 160 days in each calendar year as per regularization policy of H.P. Government. It is further submitted that case of petitioner for regularization stands submitted to the higher office by respondent *vide* letter dated 16-7-2018. The daily waged employees are stated to be engaged as per availability of work and funds and disengaged after completion of work or even earlier if funds are

exhausted. Relying upon judgment of Hon'ble Supreme Court of India in Himanshu Kumar Vidyarthi and others vs. State of Bihar and others (1997) 4 SCC 391, respondent has claimed that Forest Department is not an 'industry' within the meaning of the Act. Further, petitioner is stated to have no cause of action. On merits, the same stand has been taken as in the preliminary submissions by further submitting that only those junior workers have been regularized who have completed eight years of continuous service as daily wage worker with minimum 160 days in each calendar year. Respondent has denied violation of any provisions of the Act. Thus, prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner denying contents of the reply and reasserting those of the claim petition. Petitioner has averred to be working with respondent department for last 34 years and is most senior person, who has been given fictional breaks to victimize.

6. On the pleadings of parties, following issues were framed on 21-9-2019:—

1. Whether time to time termination of services of the petitioner during April, 1991 to year, 2016 by the respondent is illegal and unjustified, as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the petitioner has no cause of action to file the present case, as alleged? . . .*OPR.*
5. Whether the petitioner has not come to the Court with clean hands and has suppressed the true and material facts from this Court, as alleged? . . .*OPR.*
6. Whether the petitioner has not completed 8 years of continuous service with minimum of 160 days in each calendar year as per regularization policy of the H.P. Government, as alleged? . . .*OPR.*

Relief.

6. Evidence was led by the parties to the lis in support of the issues framed.

7. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard and records carefully perused.

8. For the reasons to be recorded hereinafter the findings of this Court on the above issues are as under:—

Issue No. 1	: Yes, however, time to time termination of services from 1995 till year 2016 are illegal and unjustified.
Issue No. 2	: Yes, as per operative part of discussion
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No

Issue No. 6

: No

Relief.

: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS*Issues No.1 and 6 :*

9. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

10. Petitioner Shri Dorje Angrup has deposed on oath through his affidavit Ex.PW1/A, his entire case as set up in the statement of claim. He categorically deposed of having been engaged as daily waged forest worker in Chimrut nursery under B.O. and Range Office, Udaipur *w.e.f.* July, 1984 and working as such till April, 1991. Whereafter, he is working at Churput nursery *w.e.f.* April, 1991 till date under B.O. and Range Office, Udaipur, District Lahaul & Spiti, continuously. Further deposed that department with malafide intention has given fictional breaks to him and not shown 160 days in each calendar year. He claims continuously working with the department for last 34 years, however, respondent department has not shown full mandays just to frustrate his rightful claim. Services of juniors have been regularized ignoring his services. Fictional breaks are totally illegal. Junior persons namely Yagia Chand, Shesh Ram, Rai Chand, Khem Raj, Roop Chand, Jai Ram, Son Dei, Prem Chand, Tari Devi, Raj Kumar, Jeet Ram, Ratti Devi, Dev Raj, Pyar Dasi, Bhadhur Singh, Rup Singh and Rup Dassi as mentioned in para 8 of his affidavit, are stated to have been regularized after completion of eight years of services ignoring him and hence respondent has violated the provisions of 'last come first go'. Respondent department is also stated to have violated the provisions of Sections 25-G, H and N of the Act. Respondent has applied pick and choose method, whereon one hand respondent department has allowed similar situated or junior workers to complete 365-366 days in a calendar year and simultaneously taken the plea of seasonal work. Thus, petitioner has claimed quashing and setting aside of the fictional breaks and counting the breaks for the purpose of continuous service under Section 25-B of the Act as well back wages and consequential service benefits, seniority etc. He tendered in evidence reply Ex.PW1/B filed by respondent to demand notice, copies of mandays chart Ex.PW1/C filed by the department with the reply, seniority list Ex.PW1/D, copy of office order dated 3-7-2017 Mark-A regarding regularization of daily wagers, mandays charts Ex.PW1/E and Ex.PW1/F of Yagia Chand and Rey Chand respectively, copy of the detail of daily wagers in forest nursery of Lahaul & Spiti Ex.PW1/G.

11. In cross-examination petitioner has denied not working 160 days in any year. Also denied that he was employed as seasonal/casual worker. Voluntarily stated he had worked for more than 160 days. He has admitted that workers whom he has mentioned in para 8 of affidavit have continuously worked and the department has regularized them. Voluntarily stated that he too continuously worked but department did not regularize him. He also deposed to be still working in the department.

12. PW2 Shri Dinesh Sharma, Divisional Forest Officer has proved copy of letter Ex.PW2/A whereby the Private Secretary, Forest Minister, Himachal Pradesh has written to the Conservator of Forests, Kullu for enquiring into the letter of petitioner and taking appropriate action.

13. On the other hand, Shri Dinesh Sharma, Divisional Forest Officer, Lahaul Forest Division deposed as RW1, the defence of respondent department vide his affidavit Ex.RW1/A. He deposed that petitioner was engaged as casual worker for carrying out seasonal forestry work as per

availability of funds during year 1995, whereafter he is working continuously in forest department on daily wage basis. He has claimed that petitioner has not completed eight years (now five years) services with minimum 160 days upto year 2011 in continuity as per regularization policy of H.P. Government. Further, he stated that after completion of five years of service as daily wagger with minimum 160 days in each calendar year the case of petitioner for regularization has been submitted to the higher office by respondent *vide* letter No.1059, dated 16-7-2018. He has also stated that services of petitioner have not been regularized till date. He claimed that petitioner used to leave the daily waged services at his own sweet will. Thus, claimed that petitioner is not entitled for any relief. He further tendered in evidence copy of mandays chat Ex.RW1/B of petitioner Shri Dorje Angrup.

14. In cross-examination RW1 has admitted filing of Ex.PW1/B and Ex.PW1/C before the Labour Officer. He admitted issuance of mandays charts Ex.PW1/E of Yagia Chand and Ex.PW1/F of Rey Chand. Also admitted issuance of Ex.PW1/G by the department. Further admitted that as per Ex.PW1/E Yagia Chand was engaged in 2004 and Rey Chand in 2005 and voluntarily stated that petitioner is working from 1995. He also admitted that the mandays of petitioner reflected in Ex.PW1/C and Ex.RW1/B are different. He admitted that the record issued by the department does not reconcile. He also admitted that petitioner is the senior most worker in the department and as per Ex.PW1/G the persons shown at serial No. 289 to 296 in Circle E are junior to petitioner and have been regularized. He also admitted that according to Mark-A/Ex.PY, Yagia Chand and Rey Chand as well other workers have been regularized. He also admitted petitioner is working in the department continuously till date. He admitted not filing any record proving forest department to be declared as seasonal industry as also any document proving forest department to be not falling under the definition of industry. He further admitted not having issued any notice to the petitioner for returning to work or conducting any inquiry in this regard. He has also deposed that petitioner is entitled for being regularized. Though, voluntarily stated that the relevant documents have been submitted to the authorities. He denied that despite repeated requests of petitioner he has not been regularized.

15. On record are two different mandays charts of petitioner; one Ex.PW1/C and another Ex.RW1/B. Both issued by Divisional Forest Officer, Lahaul Forest Division at Keylong. However, same show different number of days in the years, which fact has been admitted by RW1. The following are the mandays of petitioner:—

Sl. No.	Year	Detail as Ex.PW1/C per	Detail as Ex.RW1/B per
1.	1995	120 days	90 days
2.	1996	120 days	121 days
3.	1997	150 days	120 days
4.	1998	90 days	87 days
5.	1999	183 days	60 days
6.	2000	182 days	243 days
7.	2001	184 days	210 days
8.	2002	182 days	181 days
9.	2003	180 days	116 days
10.	2004	181 days	175 days
11.	2005	181 days	182 days
12.	2006	180 days	180 days
13.	2007	180 days	240 days
14.	2008	135 days	178 days
15.	2009	29 days	122 days
16.	2010	163 days	163 days

17.	2011	151 days	121 days
18.	2012	108 days	178 days
19.	2013	198 days	200 days
20.	2014	122 days	122 days
21.	2015	182 days	30 days
22.	2016	120 days	207 days

The above mandays charts go to show that petitioner was engaged in 1995 and has continuously worked till 2016 and further admittedly he is still working in the department. In many years he is shown to have worked for more than 160 days. Admittedly, in Lahaul for the purpose of Section 25-B, there is requirement of 160 days in a calendar year. The mandays chart Ex.PW1/E of Yagia Chand does show that he was engaged in 2004 and he has completed 212 days in year 2004, 272 days in 2005, 213 in 2006, 273 in 2007, 303 in 2008, 365 each in 2009 & 2010, 200 in 2011, 364 in 2012 and 89 days in 2013. Simultaneously, Ex.PW1/F mandays chart of Rey Chand reveals that he was engaged in 2005 and worked for 365 days each in 2005, 2006 & 2007, 366 days in 2008, 365 days each in 2009 & 2010, 334 days in 2011, 366 days in 2012 and 89 days in 2013. Further, office order Ex.PY dated 3-7-2017 shows Yagia Chand and Rey Chand to have been regularized. Thus, when junior workers Yagia Chand and Rey Chand have been given work for more than 160 days in each year starting from 2004 to 2012, why work in the same proportion was not given to the senior most worker petitioner Shri Dorje Angrup, has not been satisfactorily explained by the respondent. The defence of respondent department that the forest work was seasonal cannot be accepted for the reason that no document has been brought on record by respondent evidencing that the forestry work is seasonal or petitioner was employed for seasonal forestry work. There is not an iota of evidence on record to show that the forest department has been declared as seasonal industry as required under the law.

16. The defence of respondent that petitioner himself used to leave the work at his own sweet will or abandonment of work is also not tenable. The plea of abandonment of work by petitioner at his own free will and volition is not proved by the respondent. If at all petitioner absented from work why respondent has not issued any show cause notice to the petitioner has not been explained. Hon'ble Apex Court in G.T. Lad and others versus Chemicals and Fibers India Ltd., 1979 AIR(SC) 582 has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Since work for 160 days in each calendar year has not been provided by the respondent to the petitioner for no fault on part of petitioner and at the same time engaging Sh. Yagia Chand s/o Shri Tej Ram in 2004 and Rey Chand in 2005 and regularizing them on completion of 160 days, there has been violation of rule 'last come first go' envisaged under Section 25-G of the Act as no tangible reason has been assigned for the same. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason, as held by Hon'ble Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116. The time to time termination of the services of petitioner, which are artificial/fictional breaks amount to unfair labour practice in terms of the Fifth Schedule of the Act. This break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act, which provides as under:

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

- (11) 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 authorised 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;

- (12) 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—
- (f) 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;
- (b) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which.—

- (xxi) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (xxii) he has been on leave with full wages, earned in the previous years;
- (xxiii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xxiv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

17. The aforementioned Section thus enjoins a duty upon the respondent/employer to provide work atleast for 160 days in a period of 12 calendar months in tribal area to the workman for the purpose of continuous service. The employer can regulate the working of an employee as per his needs, but in view of spirit engrained in Section 25-B of the Act an employer is duty bound to provide the work for 160 days in a year in tribal area to the employee/petitioner. Hon’ble Apex Court in Employers In Relation To Digwadih Colliery v. Their Workmen, AIR 1966 SC 75, has held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. Though, reference submitted by the appropriate Government has raised the issue of time to time termination of the services of petitioner from April, 1991 to the year 2016, however, the documentary evidence in the shape of mandays chart of petitioner Ex.Pw1/C and Ex. RW1/B show the petitioner to have been engaged in year 1995. Thus, time to time termination of the

services/fictional breaks given to the petitioner during year 1995 to 2016 are held to be illegal and unjustified. Issue No.1 is accordingly decided in affirmative in above terms.

18. Petitioner's claim of regularization has been admitted by RW1 clearly deposing that petitioner is entitled for regularization. The intermittent/fictional breaks as have been held illegal and unjustified by this Court while answering issue No.1, does entitle petitioner for counting 160 days continuous service in each calendar year. RW1 has also categorically admitted that as per Ex.PY, Yagia Chand and Rey Chand have been regularized, who are admittedly junior to petitioner. In such circumstances when juniors have been regularized, petitioner in view of fundamental rights enshrined under Articles 14 and 16 of Constitution of India also deserves to be regularized with appropriate assignment of seniority over the junior workers regularized, from the date when his immediate junior was regularized. The respondent on the other hand, has not able to prove that petitioner has not completed eight years of continuous service with minimum of 160 days as per regularization policy of State Government. Rather, at the risk of repetition it is observed that RW1 has categorically stated that petitioner is entitled for regularization. Consequently, issue No.6 is answered in negative against respondent and in favour of petitioner.

Issue No.2 :

19. Shri Dorje Angrup has mentioned his age as 52 years in his affidavit Ex.PW1/A sworn on 25.10.2019, meaning thereby that he was about 28 years old in 1995. A man of 28 years of age cannot be presumed to sit idle at home during period he was stated to be out of work with the respondent. In such, circumstances, petitioner has not established that he was not gainfully employed during his break period, so, he is not entitled to back wages. However, in view of positive finding on issues No.1 and 6 above, petitioner is held entitled for counting period of artificial/intermittent breaks from 1995 to year 2016. He shall be deemed to be in continuous service from the year 1995 as also seniority at the appropriate place, except back wages. Further, he is entitled for regularization from the date he is eligible as per the regularization policy of State Government or the date when his immediate junior was regularized, whichever is earlier. Issue No.2 is accordingly answered in above terms.

Issue No. 3 :

20. The respondent has disputed the maintainability of petition by averring that H.P. Forest Department cannot be termed as 'Industry' within the meaning of Industrial Disputes Act, 1947. Respondent has relied upon judgment Himanshu Kumar Vidyarthi and others vs. State of Bihar (1997) 4 SCC 391 in support of this contention. Judgment Himanshu Kumar Vidyarthi and others vs. State of Bihar has been analyzed wherein Hon'ble Apex Court has held that every department of Government cannot be treated as industry. When the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded. In that case employees were temporarily working on daily wages in the Co-operative Training Institute, therefore, the concept of retrenchment was held not to cover these employees. The facts of the said case are clearly distinguishable and as such said judgment cannot be ipso facto incorporated in the present case. In this regard, it is apposite to refer judgment of Full Bench of Hon'ble Supreme Court in the case Chief Conservator of Forests vs Jagannath Maruti Kondhare 1996 (2) SCC 293 wherein Hon'ble Apex Court held that undertaking of social forestry work and preservation of environment could not be regarded as sovereign function of the State and clearly held that Forest Department is an industry. In view of judgment Chief Conservator of Forests vs Jagannath Maruti Kondhare, supra, keeping in view the facts as pleaded and proved on record, it is held that respondent Forest Department is an 'Industry' and therefore the objection qua maintainability is rejected. In view of positive finding on issues No.1 and 2, petition is held maintainable. Consequently, issue No. 3 is also answered in negative against the respondent.

Issue No. 4 :

Petitioner has proved his cause of action and positive findings have been arrived on issues No.1 and 2, therefore, issue No. 4 is answered in negative against respondent.

Issue No. 5 :

22. Respondent has neither proved nor been able to establish that petitioner has suppressed true and material facts from the Court or that he has not come to the Court with clean hands. Rather, respondent has given contradictory record in respect of mandays of petitioner in terms of mandays charts Ex.PW1/C and Ex.RW1/B, therefore, this issue is also answered in negative against respondent.

Relief :

23. As a sequel to the findings on the issues framed, it is held that the petitioner has been in continuous uninterrupted service with the respondent from 1995 till 2016 and is continuing as such and the breaks given by respondent, being fictional in nature, shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his date of engagement in year 1995. He shall be deemed to in continuous service with respondent with all consequential benefits except back wages. Petitioner is further held entitled for regularization from the date he is eligible as per the regularization policy of the State Government or from the date when his immediate junior has been regularized, whichever is earlier. Claim petition is thus partly allowed and reference is answered accordingly in favour of the petitioner. In the peculiar facts of the case, the parties are left to bear their costs. A copy of this award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of September, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No.	: 27/2020
Date of Institution	: 02-3-2020
Date of Decision	: 09-09-2021

Shri Mridul Kumar s/o Shri Tilak Raj, r/o Village Sarka, P.O. Pukhri, Tehsil & District Chamba, H.P. . Petitioner.

Versus

1. The Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P.

2. The Director, M/s IL& FS Human Resources Limited, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. . .*Respondents.*

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

For the Petitioner : Petitioner in person
 For Respondent No. 1 : Mrs. Pooja Sharma, Ld. Adv.
 For Respondent No. 2 : Mrs. Himakshi Gautam, Ld. Adv.

AWARD

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

“Whether the termination of services of Shri Mridul Kumar s/o Shri Tilak Raj, r/o Village Sarka, P.O. Pukhri, Tehsil & District Chamba, H.P. by (i) the Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. (ii) the Director, M/S IL&FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P., *w.e.f.* 01-06-2019, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers”

2. Today the case was listed for appearance of the petitioner. Petitioner Sh. Mridul Kumar has made the following statement on oath in the Court today:—

“I have been reinstated in previous service by the respondents. I have no further claim against respondents. Therefore, the present reference may be answered as not pressed”

RO&AC
 Sd/-
 (Shri Mridul Kumar)

PJ
 Sd/-

3. In view of the above statement, this reference/claim petition is disposed off as not pressed by the petitioner. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 9th day of September, 2021.

Sd/-
 (ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Chamba).

**IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 28/2020
Date of Institution : 02-3-2020
Date of Decision : 09-09-2021

Shri Rakesh Kumar s/o Shri Ratto, r/o Village Petti, P.O. Sarahan, Tehsil & District Chamba, H.P. . *Petitioner.*

Versus

1. The Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P.

2. The Director, M/s IL & FS Human Resources Limited, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. . *Respondents.*

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

For the Petitioner : Petitioner in person.
For Respondent No. 1 : Mrs. Pooja Sharma, Ld. Adv.
For Respondent No. 2 : Mrs. Himakshi Gautam, Ld. Adv.

AWARD

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

“Whether the termination of services of Shri Rakesh Kumar s/o Shri Ratto, r/o Village Petti, P.O. Sarahan, Tehsil & District Chamba, H.P. by (i) The Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P., (ii) The Director, M/S IL&FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P., *w.e.f.* 01-06-2019, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers”

2. Today the case was listed for appearance of the petitioner. Petitioner Shri Rakesh Kumar has made following statement on oath in the Court today:—

“I have been reinstated in previous service by the respondents. I have no further claim against respondents. Therefore, the present reference may be answered as not pressed”

RO&AC

PJ

Sd/-

Sd/-

(Shri Rakesh Kumar)

3. In view of the above statement, this reference/claim petition is disposed off as not pressed by the petitioner. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

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

Announced in the open Court today this 9th day of September, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Chamba).

LAW DEPARTMENT

NOTICE

Shimla-2, the 1st January, 2022

No. LLR-E(9)-1/2018-Leg.—Whereas, Shri Naresh Kumar, Advocate s/o Late Sh. Devinder Singh Thakur r/o Village Pandav Sheela, P.O. Jarol, Tehsil Thunag, District Mandi, H.P. has applied for appointment as Notary in Sub-Division Thunag of District Mandi under rule 4 of the Notaries Rules, 1956.

Therefore, the undersigned in exercise of the powers conferred *vide* Government notification No. LLR-A(2)-1/2014-Leg., dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of seven days from the date of publication of this notice in e-Rajpatra, H.P. against his appointment as a Notary in Sub-Division Thunag of District Mandi.

(Competent Authority),
DLR-cum-Deputy Secretary (Law-English)
to the Government of Himachal Pradesh.

पंचायती राज विभाग

अधिसूचना

शिमला—171 009, 30 दिसम्बर, 2021

संख्या: पीसीएच-एचए (1)3/2013-87935-939.—इस विभाग की समसंख्यक अधिसूचना जिसे दिनांक 27 अगस्त, 2021 को राजपत्र में प्रकाशित किया गया है के अंतर्गत, जिला शिमला, के विकास खण्ड छौहारा, की ग्राम सभा भेतियानी (जोक्टा पुल) का मुख्यालय बदलकर “बागी (जोक्टा पुल)” करने हेतु प्रस्तावना द्वारा सम्बन्धित ग्राम सभा सदस्यों से आक्षेप एवं सुझाव आमंत्रित किए गए थे तथा उपायुक्त, जिला

शिमला को इस सम्बन्ध में आक्षेप/सुझाव प्राप्त करने और उन पर विचार करने के उपरान्त अन्तिम सिफारिश प्रस्तुत करने के लिए प्राधिकृत किया गया था;

और क्योंकि उपरोक्त अधिसूचना में निर्दिष्ट अवधि के भीतर ग्राम सभा "भेतियानी (जोक्टा पुल)" का मुख्यालय बदलकर "बागी (जोक्टा पुल)" करने के संदर्भ में कोई भी आक्षेप/सुझाव प्राप्त नहीं हुआ है;

अतः हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (वर्ष 1994 का अधिनियम संख्यांक 4) की धारा 3 की उप-धारा (2) के खण्ड (ग) द्वारा प्रदत्त शक्तियों के अधीन, जिला शिमला के विकास खण्ड छौहारा की ग्राम सभा "भेतियानी (जोक्टा पुल)" का मुख्यालय बदलकर "बागी (जोक्टा पुल)" करने के सहर्ष आदेश प्रदान करते हैं।

आदेश द्वारा,
हस्ताक्षरित/—
सचिव (पंचायती राज)।

CHANGE OF NAME

I, Balvinder Saini s/o Sh. Harbans Lal Saini, r/o V.P.O. Kotla Kalan, Tehsil & District Una (H.P.) declare that I have change my name from Balvinder Kumar to Balvinder Saini. All concerned note.

BALVINDER SAINI,
s/o Sh. Harbans Lal Saini,
r/o Village & P.O. Kotla Kalan,
Tehsil & District Una, Himachal Pradesh.

