

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No. 687 of 2012 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. M.C. Kandpal, Senior Advocate, assisted by Mr. Tarun Mohan and Devesh Kandpal, Advocates, for the petitioner. Mr. Yogesh Chandra Tiwari, Standing Counsel, for the State of Uttarakhand. The petitioner, who was a workman, has prayed for quashing of the order dated 17th March, 2012, which has been passed by the Deputy Labour Commissioner, Garhwal Division, whereby he has prayed for, that he may be granted with a regular salary of Pump Operator, on the basis of the decision taken by the Labour Court in Adjudication Case No. 165 of 1999, as decided on 21st November, 2001. Consequently, also for the purposes of the grant of the wages, he has invoked the provisions contained under Section 6-H (1) and Section 33-C (2) of the Industrial Disputes Act, 1947, praying for that he may be granted, with the backwages. The respondent had earlier approached this Court and had filed Writ Petition (M/S) No. 248 of 2002, Garhwal Jal Sansthan Vs. Presiding Officer, Labour Court, Dehradun and another, in which, the petitioner has prayed for, that the direction may be issued as against the impugned order dated 21st November, 2021, passed by the Labour Court Dehradun, in Adjudication Case No. 165 of 1999. The said Writ Petition was finally decided by the Coordinate Bench of this Court by a judgment dated 11th August, 2008, whereby, the Coordinate Bench has observed that the looking to the nature of engagement of the workman, who is engaged in the Department on the post of Pump Operator, since he has worked for 240 days in every calendar year, it was held that his termination was illegal and, consequently, the shelter taken by the petitioner before the Labour Court, and the finding as it has been recorded therein by the Labour Court, does not require any interference. The relevant observation made by the judgment of 11th August, 2008, is

		extracted hereunder:- <i>“6. I have heard the learned counsel for the parties at length and perused the impugned award. It is not disputed that the workman was engaged by the department on the post of Pump Operator and he has worked more than 240 days in every ear upto his termination. The petitioners took shelter of Government Order dated 16.05.1995 while the Tubewell was operating much prior to the issuance of the aforesaid Government Order. The labour court has recorded finding of fact which calls for no interference. I do not find any illegality in the impugned award. However, the petitioner shall not be paid any back wages. The writ petition is liable to be allowed in part.”</i> The consequential effect of the judgment of 11th August, 2008, which was rendered by the Coordinate Bench on a Writ Petition (M/S) No. 248 of 2002, Garhwal Jal Sansthan Vs. Presiding Officer, Labour Court, Dehradun and another, preferred by the Garhwal Jal Sansthan, will amount to that the award passed by the Labour Court has attained finality. If we may have a reference to the award of the Labour Court itself, the Labour Court has directed reinstatement of the present petitioner, but however, the backwages were declined to be paid. The relevant observation made by the Labour Court is extracted hereunder :- “अतः मैं अभिनिर्णय देता हूँ कि सेवायोजकों द्वारा अपने श्रमिक सेवाराम पुत्र श्री इन्दरसिंह, पम्प आपरेटर की सेवायें दिनांक 15-8-98 से समाप्त किया जाना अनुचित व अवैधानिक है तथा यह निर्देश देता हूँ कि उसे सेवा में पुर्नस्थापित किया जाय व पिछली अवधि का पूर्ण वेतन व रु1000/- वाद व्यय दिया जाय।” What becomes relevant is the direction given in the last part of the award, that the petitioner was permitted to be reinstated into the services, and for the earlier period of services rendered by him, he was directed to be paid with entire backwages, plus Rs.1,000/- as a cost. It is an admitted case of the petitioner, that consequent to the aforesaid judgment, the petitioner has been reinstated into the services, and thereafter, he has been paid with the wages as it was payable to the petitioner, and consequently, in pursuance to the direction issued by the judgment of this Court, he was paid with the minimum of the wages.
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			As far as the petitioner's claim for invoking the provisions contained under Sections 6-H (1), the same has been adjudicated by the Labour Court by the impugned order dated 17th March, 2012, whereby, the petitioner's application under Section 6-H (1) has been rejected on the ground, that it will be apt that the provisions contained under Section 6-H (1) would not be applicable because since there being a dispute of wages, in that eventuality, the appropriate recourse available to the petitioner for determination of his wages, would have been to invoke Section 33-C (2). The direction as given therein the award, does not find any illegality as such because enforcement of an admissible wages could be done only by virtue of filing of an application under Section 33-C (2) and not by way of invoking the provision contained under Section 6-H (1) of the Industrial Disputes Act. Thus the reason which has been assigned by the Court for rejecting the application holding that the provisions contained under Section 6-H (1) would not be available to be made applicable to the present applicant is absolutely justified because, even if the language of Section 6-H (1) is taken into consideration, it only contemplates for the recovery of the money due from an employer, which may not be a case herein in accordance with direction of the award, and also of the earlier judgment as rendered by the Coordinate Bench, and rather, once he has been directed to be reinstated with the backwages, that will be the only admissible amount due to be paid, which could be made payable to be made under Section 33 of the Industrial Disputes Act, which provides for, that where any money is due to be paid to the workman from an employer "under a settlement or an award", the same could be claimed under Section 33-C (1) and not by way of invoking the provisions contained under Section 6-H (1). Thus the observation made by the learned Labour Court while rejecting the application under Section 6-H (1), leaving it open for the applicant to file an appropriate application under Section 33-C (2), does not suffer from any legal vices, quite apparently, if it is read in consonance with the award rendered in his favour by the learned Labour Court on 27th March, 2001.
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			In that eventuality, the impugned order, which is under challenge in the instant Writ Petition rejecting the application under Section 6-H (1) of the present petitioner, does not suffer from any illegality as such to be interfered under Article 227 of the Constitution of India. Thus, the Writ Petition lacks merit with regard to the subject involved for consideration, and the same is accordingly dismissed. (Sharad Kumar Sharma, J.) Dated 13.09.2023 Shiv
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