

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CM(M) No. 199/2023

CM No. 6304/2023

CM No. 1004/2024

Jammu Institute of Ayurveda and
Research Kot Bhalwal Nardani
Raipur Jammu Th Suman Sharma

.....Appellant(s)/Petitioner(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Sahil Mushtaq, Advocate

vs

Khazan Singh

..... Respondent(s)

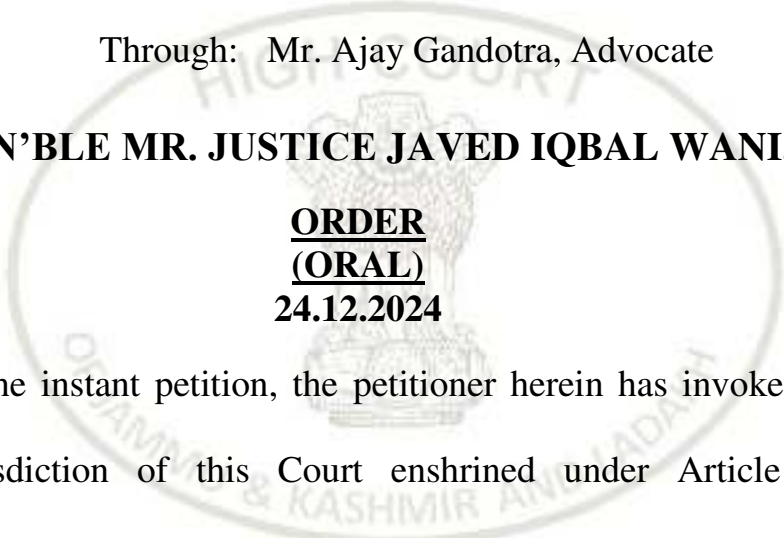
Through: Mr. Ajay Gandotra, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

(ORAL)

24.12.2024

1. In the instant petition, the petitioner herein has invoked Supervisory Jurisdiction of this Court enshrined under Article 227 of the Constitution for setting aside the award dated 27.02.2023 and published on 09.05.2023 (For short 'the impugned award') passed by the J&K Industrial Tribunal-cum-Labour Court, J&K, Jammu (For short 'the Labour court') in case titled as '*Khazan Singh vs. M/s Jammu Institute of Ayurveda & Research*'.

2. The facts giving rise to the filing of the instant petition are that the respondent herein while working as an Electrician in the petitioner institute claims to have been served with a letter bearing No. JIAR/2017/1555 dated 15.07.2017 by the petitioner herein calling

upon him to submit the details of the work done by him in the month of June 2017 till 14.07.2017 besides furnishing the details of the leaves availed by him during the months of June-July 2017 and states to have responded to the said letter by submitting two months details of the work rendered by him as also the leaves availed, stating further that after furnishing of the said details, he was not permitted to discharge his duties upon reporting to his duty on 17.07.2017 as the 16th of July 2017 was Sunday and, in fact, the Administrator and the Vice Principal of the petitioner institute informed him that his services stand terminated, stating further that thereafter, he approached before the Assistant Labour Commissioner, Jammu being the Conciliation Officer under the Industrial Disputes Act, 1947 (For short 'the Act of 1947') for initiation of conciliation proceedings which proceedings however were not concluded within 45 days, whereafter, he-respondent herein submitted an application before the Conciliation Officer that he intends to file a case before Labour court, whereupon, the Conciliation Officer issued a certificate in this regard authorizing him to approach the Labour court, consequent to which, he-respondent herein filed a petition under Section 2-A of the Act of 1947 before Labour court on 02.05.2018 alleging therein that his services stand terminated by the petitioner herein without following the provisions of the Act of 1947, in which proceedings, the petitioner herein appeared and denied the plea of termination of his services but had been called upon in terms of letter dated 15.07.2017 to furnish the details of his work done as also

the leaves availed by him followed by another notice dated 24.07.2017 served upon him requiring him to resume his duties in which he failed.

3. The Labour court upon considering the case set up by the respondent herein inasmuch as his statement made while appearing as a witness as also the stand taken by the petitioner herein before it in opposition to the said case set up by the respondent herein, passed the impugned award dated 27.02.2023 holding that the services of the respondent herein stands terminated by the petitioner herein notwithstanding the issuance of any termination order and consequently directed the petitioner herein to pay to the respondent herein an amount equivalent to Rs. 10000/- per month, besides awarding a compensation of Rs. 50000/- to the respondent herein payable by the petitioner herein while further over ruling the plea of lack of jurisdiction of the Labour court in the matter raised by the petitioner herein before the Labour court.
4. The petitioner herein has challenged the impugned award on multiple grounds urged in the petition.
5. **Objections** to the petition have been filed by the respondent herein wherein the petition is being opposed, on the premise, that the impugned award stands passed by the Labour court validly and legally, stating further that after passing of the award, the respondent herein filed an application for review of the award which was not decided by the Labour court.

Heard learned counsels for the parties and perused the record.

6. According to Mr. Rahul Pant, Senior Advocate appearing counsel for the petitioner, the Labour court grossly erred while passing the impugned award, in that, the Labour court though admitted that there is no termination order passed by the petitioner herein against the respondent herein, yet held that the respondent herein stands terminated by the petitioner herein merely on the basis of plea raised by the respondent herein discarding the stand of the petitioner herein in this regard without any lawful justification.

Learned counsel would further submit that the Labour court even failed to follow the mandate of the provisions of the Act of 1947 in the matter while dealing with the claim filed by the respondent herein from its inception and even after passing of the impugned award in that it did not submit the award to the appropriate government for its publication in the official gazette in terms of Section 15 of the Act of 1947.

7. On the contrary, Mr. Ajay Gandotra, appearing counsel for the respondent would submit that the Labour court dealt with the claim petition of the respondent herein rightly and conducted the proceedings thereon validly and passed the award under challenge legally in accordance with the provisions of the Act of 1947.

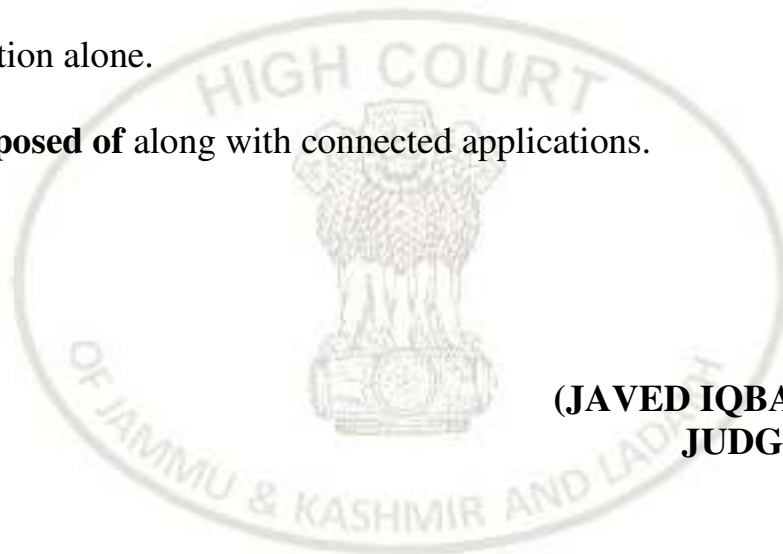
Learned counsel would further submit that the award under challenge have had been validly published in the government gazette on 09.05.2023.

8. A bare perusal of the record available on the file reveals that the respondent herein admittedly had invoked the conciliation proceedings under the Act of 1947 before Assistant Labour Commissioner/Conciliation Officer, Jammu having held that his services stand terminated by the petitioner herein while working as an Electrician in the petitioner institute, in response to which plea of the respondent herein, the petitioner herein had submitted its response stating that the services of the respondent herein were never terminated but in terms of letter dated 15.07.2017, the respondent herein was called upon to furnish the details of his working for the month of June upto 14.07.2017 as also the leaves availed by him during the said period and that the respondent herein presented himself for duty in the petitioner institute on 18.07.2017 and after marking his attendance at 10:30 AM, left the petitioner institute without informing any of the employees of the petitioner institute and ever since the said date remained absent from duties.
9. It is not in dispute that the conciliation proceedings undertaken in the matter failed and consequently the Conciliation Officer on 19.12.2017 closed the said proceedings and issued a certificate to the said effect for enabling the respondent herein to file appropriate proceedings before the Labour court, whereafter the respondent herein instituted the proceedings under Section 2-A of the Act of 1947 before the Labour court on 02.05.2018.

10. A deeper and closer examination of the respective pleadings of the parties inasmuch as the record available on the file in general and the impugned award in particular would manifestly reveal that there has been no order issued by the petitioner herein terminating the services of the respondent herein and that though the Labour court had not been oblivious to said fact yet opined and concluded that the services of the respondent herein stand terminated by the petitioner herein overlooking the specific stand of the petitioner herein as also the notices dated 15.07.2017 and 18.07.2017. The Labour court has for unknown reasons discarded and disbelieved the plea of the petitioner herein in this regard and instead accepted and relied upon the plea of the respondent herein and even has failed to record reasons thereof as to why the plea of the respondent herein is being accepted and the plea of the petitioner herein is being discarded. The Labour court seemingly has dealt with the matter without advertng to the said factual disputed issue. Seemingly, the matter has not received appropriate consideration by the Labour court which thus necessitates remanding of the matter back to the Labour court for its re-consideration.
11. In view of the aforesaid facts and circumstances, the rest of the pleas raised and urged by the counsel for petitioner against the impugned award pale to insignificance and need not to be adverted to.
12. Accordingly, the instant petition is disposed of with a direction to the Labour court to re-visit and re-consider the matter afresh in

accordance with law expeditiously in accordance with law and the impugned award, under these circumstances, shall be deemed to have been set aside.

13. The parties shall appear before the Labour court on 28.01.2025.
14. It is made clear that any observation made hereinabove shall not be deemed to have been in regard to either the claim petition filed by the respondent herein or the stand taken by the petitioner herein in opposition thereto and any observation made hereinabove shall be deemed to have been made for the purpose of disposal of the instant petition alone.
15. **Disposed of** along with connected applications.



(JAVED IQBAL WANI)
JUDGE

Jammu
24.12.2024
Neha-II

Whether the order is speaking:
Whether the order is reportable:

Yes/No
Yes/No