

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**CWP No. 4690 of 2012 a/w CWP No.
2778 of 2012**

Reserved on: 22.08.2026

Decided on: 08.09.2026

**Date of uploading on website:
09.09.2026**

1. CWP No. 4690 of 2012:

Shivalik Agro Poly Products Ltd. Petitioner

Versus

State of Himachal Pradesh & others Respondents

2. CWP No.2778 of 2012:

Naresh Kumar Petitioner

Versus

M/s Shivalik Agro Poly Products Limited ...Respondent

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting? Yes.*

In CWP No. 4690 of 2012:

For the petitioner: Mr. Rakesh Thakur, Advocate.

For the respondents: Mr. Rahul Mahajan, Advocate.

In CWP No. 2778 of 2012:

For the petitioner: Mr. Rahul Mahajan, Advocate.

For the respondent: Mr. Rakesh Thakur, Advocate.

Sushil Kukreja, Judge.

By way of the instant petition, i.e., CWP No.4690 of 2012, the petitioner, i.e., employer-M/s Shivalik Agro Poly Products Limited (hereinafter referred to as “the petitioner”),

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

has sought order or direction quashing impugned award, dated 30.12.2011, passed by learned Presiding Judge, Industrial Tribunal-cum- Labour Court, Shimla (hereinafter referred to as “the learned Tribunal”) and prayed for the following substantive relief:

“Issuance of writ in the nature of certiorari quashing the impugned award, dated 30.12.2011 passed by learned Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla and published vide gazette notification, dated 03.03.2012.”

2. On the other hand, employee-Naresh Kumar (hereinafter referred to as “respondent No. 2”) also filed petition, i.e., CWP No. 2778 of 2012, seeking order or direction for quashing and setting-aside the impugned award, whereby he was awarded compensation of Rs.1,25,000/-, with prayer that he be reinstated with full back wages.

3. The facts giving rise to the instant petition can be encapsulated as under:

3(a). The petitioner is a company registered under the Companies Act and had office at Parwanoo, H.P. and it laid challenge to the impugned award, dated 30.12.2011, passed by the learned Tribunal below, which was published in the official gazette, vide notification dated 03.03.2012, whereby

the petitioner therein Shri Naresh Kumar (respondent No. 2 herein) was treated as a workman and his reference petition, preferred under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”), i.e., Reference No. 63 of 2001, was decided in his favour and he was held entitled for compensation to the tune of Rs.1,25,000/-.

3(b). As per the petitioner herein, the impugned award is illegal, arbitrary and does not have any force of law, thus, the same is liable to be set-aside. It was averred by the petitioner that the learned Tribunal below did not consider the fact that respondent No. 2 was not a workman, as defined under Sections 2(s) of the Act. Respondent No. 2 applied and was appointed by the petitioner as Civil Engineer on 11.09.1986 and his job was supervisory in nature. He had to supervise the work of construction and repairs of the factory building, which was to be carried out by the labour engaged through the building contractor. The petitioner had no work of Civil Engineer, therefore, the services of respondent No. 2 were dispensed with after giving him a month's notice and salary in view of the said notice period. Subsequently, respondent No. 2 preferred a reference petition under

Section 10 of the Industrial Disputes Act, 1947, whereupon appropriate government made the following reference:

“Whether the termination of services of Shri Naresh Kumar s/o Shri Chirnaji Lal by M/s Shivalik Agro Agro Poly Products Ltd., Plot No. 1, Sector-3 Parwanoo, District Solan, H.P. without any notice, compensation and without compliance of Section 25-F of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief and amount of compensation, Shri Naresh Kumar is entitled to?”

3(c). The petitioner also took various grounds in its petition, however, it laid challenge to the impugned award mainly on the following grounds:

- 1. Whether respondent No. 2 was a workman, as defined under Section 2(s) of the Industrial Disputes Act?**
- 2. Whether respondent No. 2, being employed in supervisory capacity and having drawn wages exceeding Rs.1600/- per month while exercising functions mainly for managerial nature was competent to invoke jurisdiction under the provisions of Industrial Disputes Act?**
- 3. Whether respondent No. 2 having failed to prove by way of any cogent evidence that he was a workman could claim benefit of the provisions under the Industrial Disputes Act?**
- 4. Whether the onus to prove that a person is a workman lies upon the person alleging himself to be a workman?**
- 5. Whether respondent No. 2 having not approached the learned Labour Court with clean hands, the reference ought to have been decided against him?**

4. Conversely, respondent No. 2-Naresh Kumar, who is petitioner in CWP No. 2778 of 2012 (hereinafter referred to as respondent No. 2/workman), averred in his

petition that vide appointment order dated 11.09.1986 he was appointed as Civil Engineer by M/s Shivalik Agro Poly Products Ltd. on basic salary of Rs.4480/-. He used to recommend the pay bills and leave of the workers working under him, thus he was a workman, as defined under Section 2(s) of the Industrial Disputes Act. He used to sign the gate passes issued to the workers, but he was not competent to sanction leave and had no authority to appoint anyone or initiate inquiry against any person. He further averred that his duties were of technical nature and he was not performing supervisory or managerial duties and was working as workman. He worked continuously for more than 240 days, but in January, 2001, his services were wrongly terminated without complying with Section 25F or 25N of the Industrial Disputes Act and without payment of retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service. As per petitioner-Naresh Kumar, the termination of services from 07.02.2000 onwards, vide order dated 08.01.2001, after putting in 15 years of continuous service was illegal and void. Thus, he preferred a reference petition before the learned Tribunal

below. Lastly, the petitioner-Naresh Kumar prayed that the impugned award be quashed and instead of compensation of Rs.1,25,000/-, as awarded by the learned Tribunal below, he be reinstated with full back-wages.

5. The learned counsel for the employer contended that respondent No. 2-Narsh Kumar was not a workman, as defined under Section 2(s) of the Act, as he was employed as a Civil Engineer and was discharging his duties in a managerial capacity by doing the supervisory as well as managerial work, as such the learned Tribunal below had erred in observing that Shri Naresh Kumar was a workman. He further contended that the learned Tribunal below had erroneously awarded compensation to the tune of Rs.1,25,000/- to him in lieu of reinstatement as he was neither entitled for reinstatement nor for any compensation.

6. On the other hand, Shri Rahul Mahajan, learned counsel for the respondent No. 2-Naresh Kumar contended that since the termination of the respondent No. 2 was found to be illegal and void, he should have been reinstated in service with back-wages. He further contended that awarding of petty compensation by the learned Tribunal

below is not sustainable and the award deserves to be modified to the extent that respondent No. 2 be reinstated in service alongwith back-wages.

7. I have heard the learned counsel for the petitioner, learned counsel for respondent No. 2 and have carefully examined the entire records.

8. The first question which arises for consideration before this Court is as to whether respondent No. 2-Naresh Kumar was a workman, as defined under Section 2(s) of the Act.

9. It is not in dispute that the respondent No. 2 Naresh Kumar was appointed as a Civil Engineer by the employer, vide appointment letter dated 11.09.1986, Ex.R-1. It is also not in dispute that his basic salary was Rs.4480/- per month. While appearing in the witness-box as PW-1, respondent No. 2 Naresh Kumar deposed that he was a Civil Engineer and used to work in civil maintenance department. He further deposed that the construction and maintenance work was of perennial nature and his nature of duties included preparation of bills of contractors after physical verification of the works executed by them on the sites,

preparation of estimates and drawing etc. He also deposed that there was no employee subordinate to him and instead he used to report to Shri S.S. Thakur, Maintenance Incharge and G.M. Works. Shri S.S. Thakur, Maintenance Incharge was looking after his work after retrenchment and G.M. got his son recruited in his place. As per him, work of Surveyors, Draughtsman, Plumbers, Fitters, Carpenters and Helpers was being supervised by Shri S.S. Thakur. He also deposed that he was also looking after the construction work of the company at Indore, Mohali, Majra and Delhi.

10. On the other hand, on behalf of the employer Shri B.S. Bisht appeared in the witness-box as RW-1 and deposed that he was posted as Personnel Manager, with the respondent and the petitioner was supervising the work of Civil Supervisors, Carpenters, Plumbers, Welders and Turners etc. He further deposed that the petitioner used to recommend their leaves as per their leave cards mark X-1 to mark X-7 and he used to verify their attendance and progress record vide mark X-8 and mark X-9. He also deposed that the petitioner used to check and approve the bills submitted by the civil contractors vide mark X-10. As

per this witness the petitioner also used to approve the purchase materials vide store receipts mark X-11. He was working in the officer's grade and the post being held by him did not exist. He further deposed that the respondent No. 2 did not have work of civil nature. In cross-examination he admitted that respondent No.2 used to sign gate passes and he was not having any authority to appoint anyone or to initiate disciplinary action against anyone. He also admitted that he was not having any authority to sanction leave and he used to approve the materials required for civil construction and maintenance.

11. The term workman has been defined under Section 2(s) of the Act. Section 2(s), prior to (Amendment) Act, 2010, for the sake of ready reference, is extracted hereunder:

"2[(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or***

(ii) Who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity' or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding [one thousand six hundred rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

12. From bare reading of the aforesaid definition, it is apparent that the designation of the person is not material for determination of point as to whether he is workman or not and it is to be determined on the basis of work being done by him. The respondent No.2 was appointed by means of the order dated 01.04.1998 by the General Manager (Human Resources) on the post of Service Engineer on 01.04.1998.

13. The contention of learned counsel for the petitioner is that since the respondent No.2 was working in supervisory capacity and he was drawing last wages in the sum of Rs 7179/- per month, therefore he cannot be treated to be a workman under the exception clause (iv) of Section 2(s), prior to (Amendment) Act, 2010. On the other hand, learned counsel for the respondent No.2 submitted that the respondent No.1 (workman) was neither assigned the supervisory duty nor he was working in supervisory capacity

and his work as Civil Engineer was only manual work, therefore, he has rightly been treated as workman by the Tribunal.

14. The Hon'ble Apex Court in a catena of decisions has held that for determining the question as to whether a person employed in a industry is a workman or not, not only the nature of the work performed by him but also terms of the appointment in the job performed are relevant considerations. An undue importance need not be given for the designation of an employee, or the name assigned to the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs, which means that duties performed are the main determining factor for considering a particular person as a workman or not and designation is immaterial. If a person alleged to be working in supervisory category but did not allocate job to the workman, and has no power to sanction leave to any of the workmen working under him nor did he exercise any disciplinary control over the workmen, his duties cannot be said to be of supervisory nature.

15. The Hon'ble Supreme Court, in the case of **Anand**

Regional Co-operative Oil Seeds Growers Union Ltd vs. Shailesh Kumar Harshad Bhai Shah, (2006) 6 SCC 548,

has held that for determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations. The relevant paragraphs 13 to 16 of the judgment of Hon'ble Supreme Court are extracted here-in-below:-

"14. For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

15. Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

16. The precise question came up for consideration in Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970) 3 SCC 248] wherein it was held:

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of

clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity".

- 17. A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence."***

16. In the instant case, admittedly, the respondent No. 2 was appointed as a Civil Engineer. However, he was looking after the construction and maintenance work of the company at Parwanoo, Indore, Mohali, Delhi and Majra. His duties included preparation of bills of contractors after physical verification of the works and drawing etc, whereas the work of the Surveyors, Draughtsman, Plumbers, Fitters, Carpenters and Helpers was being supervised by Shri S.S. Thakur. He used to sign the gate passes issued to the workers and was not competent to sanction leave. He was not having the authority to appoint anyone or to initiate enquiry against any person. His duties were of technical nature. He was not performing supervisory and managerial duties. The petitioners have failed to prove any such duties of supervisory nature being entrusted upon respondent No. 2. Thus, the learned Tribunal below has rightly held the petitioner to be a workman.

17. Respondent No. 2 had completed 240 days in twelve months preceding his termination, therefore, the provisions of Section 25-F of the Act are applicable. Section 25-F, for the sake ready reference, is extracted hereunder:

“Section 25-F: Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;***
- (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and***
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”***

18. The perusal of the provisions of Section 25-F, as extracted hereinabove, shows that where the worker has been in continuous service for not less than one year, one month's notice in writing, indicating the reasons for retrenchment or wages for the period of notice has to be paid. Apart from it, he has also to be paid compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service. The respondent No. 2 had been working with the petitioner since the year

1986 and he continued to work till January, 2001. Thus, before retrenchment of respondent No. 2 , the petitioner, was required to comply with the provisions of Section 25-F of the Act and had to pay retrenchment compensation which was to be equivalent to fifteen days' average pay for every completed year of continuous service. The amount, admittedly, has not been paid by the petitioner to respondent No. 2. The retrenchment of respondent No. 2, in such circumstances, even after considering one month's notice terminating the services of respondent No. 2 w.e.f. 07.02.2001 issued, vide Ex.P1, dated 08.01.2001, is illegal and void.

19. The perusal of the impugned award shows that respondent No. 2 has been held entitled to lump-sum compensation of Rs.1,25,000/- by the learned Tribunal below, however, the learned counsel for the petitioner contended that since the termination of the petitioner is held illegal, therefore, he should have been reinstated in service alongwith back-wages.

20. It is a settled law that relief by way of reinstatement with back-wages is not automatic and even

when an order of retrenchment passed in violation of Section 25-F of the Act is set aside, award of reinstatement should not be automatically passed. There is no principle that for an illegal termination of service, the normal rule is reinstatement with back-wages, instead the learned Tribunal below can award compensation. The Hon'ble Apex Court in the case of ***Asst. Engineer, Rajasthan Dev Corp. & anr. vs. Gitam Singh, (2013) 5 SCC 136***, held that when the termination of a workman is held illegal it can be said without any fear of contradiction that the Supreme Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. The court observed, inter alia, that:

"21. In Santosh Kumar Seal while dealing with a case of workmen who were engaged as daily wagers about 25 years back and had hardly worked for two or three years, this Court speaking through one of us (R.M. Lodha, J.) held that reinstatement with back wages could not be said to be justified and instead monetary compensation would subserve the ends of justice. It was held that compensation of Rs. 40,000/- to each of the workmen would meet the ends of justice.

22. From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that

dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of dailyrated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service.”

21. In ***Jagbir Singh vs. Haryana State Agriculture Marketing Board & anr.***, reported in **(2009) 15 SCC 327**, it has been held that even when an order of retrenchment passed in violation of Section 25-F of the Act is set aside, award of reinstatement should not be automatically passed. The relevant para of the judgment (supra) is extracted hereunder:

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

22. Thus, from above quoted observations, it can be summarized that the direction to reinstate the workmen and/or direction with regard to back-wages should not be passed mechanically in all cases, even in cases where the termination is found to be illegal and/or

unjustified. The final relief should be appropriately modified and moulded after taking into account the facts involved in the case and relevant factors and circumstances.

23. In the instant case, as discussed above, the respondent No. 2 was removed from service in January, 2001. Thus, long 25 years have intervened as such, relief of reinstatement with back wages to respondent No. 2 after a period of 25 years cannot be said to be justified and instead monetary compensation would subserve the ends of justice. Having regard to the fact that the direction to reinstate is rendered incapable of being complied with, the learned Tribunal has rightly held the respondent No. 2 entitled for lump sum compensation.

24. Now the question which arises for consideration before this Court is as to whether the amount of compensation awarded by the learned Tribunal below is inadequate as contended by the learned Counsel for respondent No. 2-workman and what would be a reasonable quantum of compensation to be granted in the facts of the present case. It is not possible to lay down any fixed formula for determining the amount of compensation in lieu of

reinstatement and some amount of guess work is always involved in such determination. The Court must take into consideration important factors such as nature of employment, age of the employee, length of service and last drawn wages. After taking into account the long span of 25 years during which period the matter had remained pending, this court is of the view that the interest of justice will be met if the petitioner is awarded lumpsum amount of Rs.3,00,000/- (Rupees Three Lacs Only) by way of compensation in lieu of reinstatement.

25. In view of what has been discussed hereinabove, the impugned award passed by the learned Tribunal below is modified to the extent that the petition filed by the workman is partly allowed and he is held entitled to lumpsum compensation in the sum of Rs.3,00,000/- (Rupees Three Lacs Only) in lieu of reinstatement, which shall be paid to him by the employer within a period of six weeks from today, otherwise it shall carry interest @ 6% per annum from the date of passing of this judgment till the realization of the amount and the petition filed by Shivalik Agro Poly Products Ltd. is dismissed.

Pending application(s), if any, shall also stand(s)
disposed of.

(Sushil Kukreja)
Judge

8th September, 2023
(virender)