IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWP No. 13438 of 2025
Date of Decision: October 30, 2026

Principal Secretary (Public Works) and Ors. .Petitioners

Versus

Shri Raj Kumar … Respondent

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]

For the Petitioner: Mr. Rajan Kahol, Additional Advocate General and Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

For the Respondents: Nemo.

Sandeep Sharma, Judge (oral)

Present petition has been filed under Art. 226 of Constitution of India, against Award dated 16.11.2022 passed by learned Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, Himachal Pradesh (Camp at Mandi) (hereinafter, 'Tribunal') in Ref. No. 728/2016, whereby reference made to learned Tribunal below by the appropriate Government came to be partly allowed and sum of Rs.1,50,000/- has been awarded as compensation in favour of the respondent workman in lieu of reinstatement.

2. Precisely, the grouse of the petitioner department as has been highlighted in the petition and further canvassed by Mr. Rajan Kahol, learned Additional Advocate General representing the petitioner is that learned Tribunal below has erred in awarding compensation to the respondent workman, because, having taken note of the inordinate delay of 16 years in raising the industrial dispute, there was no occasion to entertain

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

the claim of the respondent workman, rather same ought to have been dismissed. Mr. Rajan Kahol, learned Additional Advocate General submitted that the respondent workman had worked only for 612.5 days during the period w.e.f. November, 1998 to October, 2000 prior to his disengagement, as such, compensation awarded by learned Tribunal below is liable to be set aside.

3. Quintessential facts, as emerge from the pleadings and material adduced on record by the parties, are that pursuant to dispute inter se respondent workman and the petitioners-department, appropriate Government made following reference under Section 10(1) of the Act to the learned Tribunal below:

> "Whether alleged termination of services of Sh. Raj Kumar S/o Sh. Chand Ram Vill. Chah, PO Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. during 10/2000 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages during the 11/1998 to 10/2000, only for 612.5 days, and has raised his industrial dispute vide demand notice dated 8.6.2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

4. Subsequent to the receipt of aforesaid reference, a corrigendum reference was issued by the appropriate Government on 23.05.2019, which was duly taken on record by learned Tribunal below, correcting the parentage and address of the workman to read as *"Shri Raj Kumar S/O Shri Sher Singh, R/O Village Sanour, P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P."* in place of *"Shri Raj Kumar S/O Shri Chand Ram, R/O Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P."*

5. In nutshell, case of the respondent workman, as came to be projected before learned Tribunal below, is that he was engaged as a daily waged Beldar on muster roll basis w.e.f. November, 1998 and worked continuously till October, 2000. He completed more than 240 days in each calendar year during his service, but in October, 2000, his services were retrenched by way of an oral order without complying with mandatory provisions of Section 25-F of the Act. Respondent workman further alleged violation of Section 25-G of the Act on the ground that the principle of 'last come first go' was not followed and junior workmen, including one Shri Bihari and Shri Shashi Kant, were retained. It was further asserted that after termination of his services, fresh hands were engaged by the department in the years 2003, 2004, 2007, and 2011 without affording him an opportunity of re-employment, in clear violation of Section 25-H of the Act.

6. Petitioner department contested the claim before learned Tribunal below primarily on the ground of an inordinate delay of 16 years in issuing demand notice dated 08.06.2015. On merits, the department took the plea of abandonment, contending that the services of the respondent workman were never terminated, but he had left the work of his own accord after working for 612.5 days.

7. On the basis of aforesaid pleadings as well as evidence adduced on record by the respective parties, learned Tribunal below partly allowed the claim petition of the petitioner whereby it proceeded to award sum of Rs. 1,50,000/- to the petitioner in lieu of retrenchment, which was held to be in violation of principle of last come first go. In the aforesaid background, petitioners-State has approached this court in the instant proceedings.

8. Having heard learned counsel for the petitioners-State and perused the material available on record vis-à-vis reasoning assigned in the impugned Award, this Court finds no illegality or infirmity in the same, as such, no interference is called for inasmuch, denial of reinstatement is concerned in view of the fact that no plausible explanation came to be rendered on record qua inordinate delay in raising the dispute.

9. Plea of abandonment set up by the department was rightly rejected by learned Tribunal below as the department failed to discharge the onus by showing that any call-back notice or speaking order was ever issued to the workman. Furthermore, violation of Section 25-G was also established on record as Shri Shashi Kant, who was engaged subsequent to the petitioner in January, 2000, was retained in continuous service. Similarly, the department denied the engagement of fresh hands without producing relevant recruitment records, thereby establishing violation of Section 25-H of the Act.

10. True it is that there is evidence available on record suggestive of the fact that petitioner had been making requests with effect from 1998 till 2006 to the Department for his reinstatement but same may not be sufficient to condone delay in making reference.

11. In case titled **Jeetubha Khansangji Jadeja** v. **Kutchh District Panchayat**, 2022 SCC OnLine SC 1284, Hon'ble Apex Court held that when termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of principle of last come first go, terminated worker should not be denied reinstatement but while giving aforesaid relief, Hon'ble Apex Court made a relevant observation that aforesaid principle is subject to the condition that

there are no other weighty reasons for adopting the course of grant of compensation instead of reinstatement.

12. In the case before Hon'ble Apex Court, no ground of delay, if any, ever came to be raised at the behest of respondent, rather in aforesaid case, reference was made well within time, but in the instant case, admittedly, there is inordinate delay of 16 years in making reference. If it is so, learned Tribunal below rightly did not proceed to order reinstatement, but directed the petitioner department to pay lump sum compensation. Even if it is presumed that the respondent workman kept on approaching the department for his reinstatement, no plausible explanation has been rendered on record qua inordinate delay of 16 years, as such, learned Tribunal below rightly did not order reinstatement, rather directed to pay lump sum compensation.

13. In the case at hand, if writ petition filed by the department, laying therein challenge to impugned Award is perused in its entirety, there is no specific prayer to set aside the Award, rather its precise case is that compensation awarded by learned Tribunal below is on higher side. Since it stands established on record that prior to his illegal termination, the respondent workman worked for 612.5 days during the period w.e.f. November, 1998 to October, 2000 and completed more than 240 days in the preceding 12 calendar months, coupled with the fact that thereafter, work remained available throughout and persons junior to the respondent workman, namely Mr. Bihari and Mr. Shashi Kant, were retained and fresh hands were engaged in the years 2003, 2004, 2007 and 2011, this Court is not persuaded to agree with Mr. Rajan Kahol, learned Additional Advocate General that compensation awarded to the tune of Rs. 1.5 Lakh by learned

Tribunal below is on higher side. Even in the reply filed by the respondent workman, prayer has been made to uphold the Award.

14. At this stage, it is apt to take note of judgment passed by Hon'ble Apex Court in **State of Uttar Pradesh** v. **Krishna Murari Sharma**, CA @ Special Leave Petition (C) No. 444 of 2024), wherein Hon'ble Apex Court having taken note of delay of 16 years in seeking reference, awarded lump sum compensation of Rs.2.50 Lakh. Relevant paragraphs of aforesaid judgment read as under:

> "10. Assistant Engineer Rajasthan State Agricultural Marketing Board v. Mohan Lal was concerned with a limitation of 6 years. Ajaib Singh was held to be not laying (2013) 14 SCC 543 down an absolute proposition of law that where plea of delay is not raised by the employer, there would be no justification for moulding the relief. It was held noticing a series of decisions that the Labour Court considering the aspect of delay, at its discretion could mould the relief, since delay in raising an industrial dispute is definitely a circumstance to be reckoned by the Labour Court; though the Limitation Act, 1963 is not applicable to the references made under the ID Act. In the said case, in lieu of reinstatement, a compensation of Rs.1,00,000/- (Rupees One Lakh) was directed to be paid.
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> 11. Even Shahaji1 relied on by the respondent-workman accepted the principle that the Labour Court, if finding the termination to be illegal could suitably mould the relief to be granted to the workman in view of the delay. Rajesh Kumar2 was a case in which the ground of stale claim was not raised before the Labour Court and was first urged before the High Court. As we noticed at the outset, in the present case, the failure of the State, or the conscious decision taken not to challenge the order of reference does not deny the employer State the right to raise that contention before the Labour Court. Moreover, the same had been raised at the first instance before the Labour Court and this is not a case where for the first time the ground of delay was urged before the High Court or before this Court.

> 12. Learned Senior Counsel for the State has also fairly submitted that he would not be averse to a lumpsum compensation being paid in lieu of the entire back wages as directed by the employer.
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> 13. Taking the entire circumstances into account, especially the fact that there was a 16 year delay in seeking a reference, we are of the opinion that a lumpsum compensation of Rs.2,50,000/- (Rupees Two Lakhs and fifty thousand) would suffice. The order of the Labour Court as affirmed by the High Court are both set aside to the extent of reinstatement and award of back wages. While upholding the award regarding the illegality of the termination, reckoning the gross delay caused, a lumpsum compensation of Rs.2,50,000/- (Rupees Two Lakhs and fifty thousand) would be paid to the respondent workman within a period of two months from the date of receipt of certified copy of this order. If the said sum is not paid within the period stipulated, the State shall be liable to pay interest at the rate of 7% per annum from the date of expiry of the two-month period."

15. Though, Mr. Rajan Kahol, learned Additional Advocate General, while referring to aforesaid judgment attempted to argue that in the case before Hon'ble Apex Court, though there was delay of 16 years in making reference, workman in that case had worked for a considerable time, whereas in this case, the respondent workman has only worked for 612.5 days.

16. True it is that as per mandays chart adduced on record by the department, the respondent workman has worked for 612.5 days, but once it is not in dispute, rather stands admitted that at the time of termination of the respondent workman in October, 2000, work was available and persons junior to the respondent workman were retained, coupled with the fact that fresh hands were engaged by the department in the years 2003, 2004,

2007 and 2011 without offering reemployment to the respondent workman, no illegality can be said to have been committed by learned Tribunal below while awarding compensation to the tune of Rs. 1.50 Lakh.

17. Though, having taken note of the fact that at the time of retrenchment of petitioner, principle of 'last come, first go' was violated, petitioner herein ought to have been reinstated but since there is delay of more than 16 years in making reference by the petitioner, this Court sees no reason to interfere with the Award passed by learned Tribunal below.

18. Consequently, in view of above, the petition fails and is dismissed accordingly. Award passed by learned Tribunal below is upheld. Pending applications, if any, stand disposed of accordingly. Interim directions, if any, stand vacated. Record be sent back forthwith.

No order as to costs.

(Sandeep Sharma),
Judge

October 30, 2026
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