IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWP No. 4295 of 2025 with
CWP No. 13498 of 2025
Date of Decision: October 15, 2026

1. CWP No. 4295 of 2025
Sushil Kumar .Petitioner

Versus

State of Himachal Pradesh and Ors. … Respondents

2. CWP No. 13498 of 2025
The Engineer-in-Chief HPPWD and Anr. .Petitioners

Versus

Sushil Kumar … Respondent

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

For the Petitioner: Mr. Kishore Pundeer, Advocate, for the petitioner in CWP No. 4295 of 2025 and for the respondent in CWP No. 13498 of 2025.

For the Respondents: Mr. Rajan Kahol, Additional Advocate General with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for the respondent-State in CWP No. 4295 of 2025 and for the petitioners in CWP No. 13498 of 2025.

Sandeep Sharma, Judge(oral)

Since commons questions of facts and law are involved in both these petitions, same were clubbed and heard together and now are being disposed of vide this common order.

2. Present petitions have been filed under Art. 226 of Constitution of India, against Award dated 28.5.2024 passed by learned Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, Himachal Pradesh (hereinafter, 'Tribunal') in Ref. No. 638/2016, whereby reference made to

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

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learned Tribunal below by appropriate Government came to be partly allowed and a sum of Rs.5.00 Lakh has been awarded as compensation in favour of workman.

3. For the sake of clarity, parties are being referred to as per their status in CWP No. 4295 of 2025.

4. Precisely, the grouse of the petitioner is that once it stood established on record that despite there being availability of work coupled with the fact that persons junior to him were retained at the time of termination of his services, learned Tribunal below ought not have denied reinstatement, rather ought to have ordered his reinstatement from the date of termination. Besides above, it has been also submitted at the behest of the petitioner that compensation awarded to the tune of Rs.5.00 Lakh is on lower side, especially taking note of the fact the services of petitioner were retrenched in violation of the provisions of Industrial Disputes Act (in short, 'Act').

5. On the other hand, the respondent has laid challenge to the Award on the ground that the learned Tribunal below has erred in awarding compensation to the tune of Rs.5.00 Lakh to the petitioner, because, having taken note of inordinate delay of sixteen years in making reference, there was no occasion to entertain claim of the petitioner, rather, same ought to have been dismissed. Mr. Rajan Kahol, learned Additional Advocate General submitted that the petitioner has worked only for 404 days prior to his disengagement, as such, compensation awarded by learned Tribunal below of Rs.5.00 Lakh is liable to be set aside.

6. Quintessential facts, as emerge from the pleadings and material adduced on record by the parties, are that pursuant to dispute *inter se*

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petitioner and the respondent, appropriate Government made following reference under S.10(1) of the Act to the learned Tribunal below:

> "Whether alleged termination of services of Sushil Kumar s/o Sh. Damodar Dass, Vill. Sanour, P.O. Sari, Teh- Sarkaghat, Distt-Mandi, H.P. during 04/2000 by (1) the Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla-02, (2) Executive Engineer, H.P.P.W.D Division, Dharmpur, District Mandi, H.P., had worked as Beldar on daily waged basis during the year, 1/1999 to 04/2000 only for 404 days and has raised his industrial dispute vide demand notice dated 30-03-2015 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 employer/management?"

7. In nutshell, case of the petitioner, as came to be projected, is that he was engaged as a daily worker by HPPWD Division (B&R) Dharampur in January, 1999, and since then, he worked regularly but thereafter in the month of April, 2000, without any rhyme or reason, his services were terminated verbally, without issuing one month's notice or payment of salary of one month in lieu of notice. It also came to be stated at the behest of the petitioner that department terminated services of around two thousand daily wage workers from Dharampur Division in violation of provisions of the Act and respondent, at their whims and fancies, retained junior persons namely Roshani Devi, Mamta Devi and Inder Singh in service, as such, violated principle of 'last come, first go.' Petitioner further alleged that after termination of his services, respondents employed fresh hands namely Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2001, Lekh Raj in November, 2024 and Satya Devi on 27.1.2011, but petitioner was not given

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an opportunity of re-employment and as such, violated provisions of S.25-H of the Act. Petitioner further alleged that after termination of his services, 1697 workmen were terminated in June/July, 2004 but some of them were reengaged by the respondent, however, petitioner was not re-engaged by the respondent. Petitioner further alleged that he approached the respondents in July 2000, April 2002, November, 2004, May 2005, October 2005 and March 2005 to reinstate him but respondents expressed their inability to reinstate the petitioner, on the ground that surplus workmen of Dharampur Division were retrenched and process of retrenchment was continuing.

8. Per contra, respondent Department has refuted the claim of the petitioner on the ground that he was engaged as a daily wage worker in January, 1999 and worked till April 2000, whereafter, he of his own volition, left the job, as such, there was no occasion, if any, to issue notice or pay wags in lieu of notice period. While specifically denying that services of workman were terminated in 1999 and 2000, Department also claimed before learned Tribunal below that workmen named by the petitioner were engaged on muster roll basis on compassionate grounds after approval from the Government, as their family members died in harness. Besides above, it came to be averred in the reply that some workmen were retrenched during February, 2004, however, by that time, petitioner had already left the job. Department specifically denied that services of 1697 workers were terminated in June/July, 2004. It is stated in the reply to the petition that workmen who were terminated in 2004, had assailed their termination before administrative office and thereafter they were re-

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engaged in a phased manner but by that time, petitioner had abandoned the job.

9. On the basis of aforesaid pleadings as well as evidence adduced on record by respective parties, learned Tribunal below partly allowed the claim of petitioner, whereby it proceeded to award compensation to the tune of Rs.5.00 lakh to the petitioner in lieu of retrenchment, which was held to be in violation of principle of 'last come, first go.' In the afore background, both the parties have approached this Court, by way of respective petitions.

10. Precisely, the case of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Kishore Pundeer, learned counsel for the petitioner is that once learned Tribunal below had arrived at a conclusion that termination of petitioner was in violation of principle of 'last come, first go', and it stood established on record that after termination of services of petitioner, fresh hands were engaged by the Department, without giving an opportunity to the petitioner for reengagement, there was no occasion for learned Tribunal below to deny reinstatement to the petitioner, rather, in that eventuality, petitioner ought to have been ordered to be reinstated from the date of his illegal termination.

11. Mr. Kishore Pundeer, learned counsel for the petitioner further submitted that statements made by PW-1 and PW-2 clearly establish that immediately after terminating services of the petitioner, he approached the Department for his reinstatement but he was discriminated. Mr. Pundeer submitted that there is overwhelming evidence available on record suggestive of the fact that persons junior to the petitioner were retained and fresh hands were engaged but for no plausible reason, petitioner was not offered appointment, as such, impugned Award passed by learned Tribunal

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below requires to be interfered with, inasmuch petitioner came to be denied relief of reinstatement.

12. Per contra, Mr. Rajan Kahol, learned Additional Advocate General submitted that there was inordinate delay of around 15-16 years in raising dispute and as such, learned Tribunal below rightly did not order reinstatement. He further submitted that compensation awarded to the tune of Rs.5.00 Lakh is on higher side, because, it stood proved on record that petitioner has only worked for 404 days, for which he was otherwise paid wages.

13. Having heard learned counsel for the parties 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 dispute.

14. True it is that there is evidence available on record suggestive of the fact that petitioner had been making requests with effect from 2000 till 2006 to the Department for her reinstatement but same may not be sufficient to condone delay in making reference.

15. 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

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

16. 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 15 years in making reference. If it is so, learned Tribunal below rightly not proceeded to order reinstatement, but directed the respondent Board to pay lump sum compensation. Even if it is presumed that petitioner kept on approaching Department till March, 2006 for her reinstatement, no plausible explanation has been rendered on record qua delay of nine years, as such, learned Tribunal below rightly did not order reinstatement rather directed to pay lump sum compensation.

17. In the case at hand, if writ petition filed by Department, laying therein challenge to impugned Award is perused in its entirety, there is no specific prayer to set aside the Award rather it's precise case is that compensation awarded by learned Tribunal below is on higher side. Since it stands established on record that prior to her illegal termination, petitioner worked for 203 days coupled with the fat that thereafter, work remained available throughout and persons junior to the petitioner were retained and fresh hands were engaged, this Court is not persuaded to agree with Mr. Rajan Kahol, learned Additional Advocate General that compensation awarded to the tune of Rs.5.00 Lakh by learned Tribunal below is on higher side. Even in the reply filed to the petition of Sushil Kumar, prayer has been made by respondent-State to uphold the amount.

18. 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 @

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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.
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> 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

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> 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."

19. Though, Mr. 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 15 years in making reference but the petitioner in that case had worked for a considerable time, whereas, in this case, petitioner has only worked for 404 days (fifteen months).

20. True it is that as per man days chart adduced on record by the Department, petitioner has only worked for 404 days, but once, it is not in dispute, rather stands admitted that at the time of termination of petitioner, work was available and persons junior to petitioner were retained coupled with the fact that petitioner after being terminated in April 2000, kept on approaching the respondent Department till March, 2006 for his reengagement, no illegality can be said to have been committed by learned Tribunal below, while awarding compensation to the tune of Rs.5.00 Lakh.

21. 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 15 years in making reference by the petitioner, this Court sees no reason to interfere with the Award passed by learned Tribunal below.

22. Consequently, in view of above, both the petitions fail and are dismissed accordingly. Award passed by learned Tribunal below is upheld.

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All pending applications, in both the petitions stand disposed of. Interim directions, if any, stand vacated. Record be sent back forthwith.

No order as to costs.

(Sandeep Sharma),
Judge

October 15, 2026
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