



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

CWPOA No. 674 of 2019
Decided on: 28.11.2025

Bihari Lal

...Petitioner

Versus

State of H.P. and others

...Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

Whether approved for reporting?. Yes.

For the petitioner: Dr. Lalit Kumar Sharma,
Advocate.

For the respondents: Mr. Amit Kumar Chaudhary,
Deputy Advocate General.

Ranjan Sharma, Judge

Petitioner, Bihari Lal, a disengaged daily
wager, initially filed Civil Writ Petition No. 6609 of
2011 which was transferred to the State Administrative
Tribunal and upon abolition of Tribunal, the matter
stood re-transferred to this Court, as *CWPOA No.674
of 2019*, seeking the following reliefs :-

- “(i). That the action of the respondents, who
has orally terminated the services of
the petitioner from the post of
Motermate may kindly be set aside and
quashed and the respondents may be
directed to re-engage the petitioner
from the day when his junior persons
were engaged (02.11.1989) against
such post with all consequential
benefits flow therefrom.



- (ii). That the respondents may kindly be directed to produce the entire record pertaining to the case of the petitioner for the kind perusal of this Hon'ble Court."

FACTUAL MATRIX:

2. Grievance of the petitioner is that he has passed his matriculation in the year 1985 and passed ITI in the trade of Carpenter in the year 1987. It is averred that the petitioner was appointed as Motormate on daily wage basis in Sub Division, HPPWD, Banjar in July 1987 and he worked till March, 1990. It is further averred that the petitioner has completed more than 240 days in each calendar year but, with the variation that in the Month of April 1989 his services were orally terminated and he was assured by the respondent that he will be back in the service as and when the work is available.

2(i). It is averred that after obtaining information under Right to Information Act vide *Annexure P-1*, the petitioner came to know that junior persons were retained and fresh persons were engaged [w.e.f November 1989] without considering the petitioner and some of them have been regularized between the years from 1998 to 2002 [as per *Annexure B* to *Annexure P-3*].



The names of six juniors namely Gian Chand, Jagar Nath, Yog Raj, Khabe Ram, Devinder Kumar and Davinder Singh have been narrated in the petition. Violation of Section 25-F, 25-G and 25-H has also been asserted in the writ petition. It is further averred that there is no limitation under the Industrial Disputes Act to assail illegal retrenchment as in this case.

In this backdrop, a prayer is made that the oral termination may be set aside and the respondents may be directed to re-engage the petitioner from the date the juniors were engaged on 02.11.1989, in same capacity with all consequential benefits.

STAND OF STATE AUTHORITIES IN REPLY-AFFIDAVIT:

3. Pursuant to the issuance of notice on 19.08.2011, the State Authorities have filed the Reply-Affidavit dated 27.09.2011 of Superintending Engineer, 6th Circle HPPWD, Kullu.

3(i). Perusal of the Reply-Affidavit indicates that the petitioner was engaged in October 1987, on daily wages as Motormate and he continued in service till February, 1989 when he left the job on his own.



Reply-Affidavit denies that the petitioner has completed 240 days in 1987 and 1989.

3(ii). Reply-Affidavit further indicates that the petitioner *left the job of his own* on February 1989 and he slept over his rights and remedies for the last 21 years till the filing of the instant petition on 15.07.2011. Reply-Affidavit further states that other persons who were engaged in 1989 and continued to work were regularized as per the Government Policy, but since the petitioner chose not to seek appropriate remedy against alleged abandonment, coupled with the fact that he did not complete 240 days in the year preceding his abandonment the claim for re-engagement and regularization was not tenable.

3(iii). So far as juniors are concerned, the Reply-Affidavit indicates that they were engaged in 1989 and 1991 and had completed continuous service with 240 days and upon completion of requisite service they were regularized as per the Policy of the State Government in vogue at the relevant time.

3(iv). Petitioner filed an application [CMP No.11964 of 2012] placing reliance on the Division Bench judgment



of this Court, in **Kishori Lal** versus **Himachal Pradesh State Electricity Board Limited, CWP No.6832 of 2012**, decided on 22.08.2012 to assert that this Court had directed the re-engagement by following the principle of last come first go and therefore, the petitioner may be extended the same benefits.

NO REBUTTAL BY PETITIONER:

4. Petitioner has not filed any rejoinder, so as to rebut-negate the stand taken in Reply-Affidavit by the State Authorities.

5. Heard, Dr. Lalit Kumar Sharma, Learned Counsel for the petitioner and Mr. Sumit Sharma, Learned Deputy Advocate General for the Respondents.

ANALYSIS:

6. Taking into account the entirety of facts and circumstances and the material on record, this Court is *not inclined to accept the prayer* of the petitioner for assailing the oral termination and for re-engagement in service, *for the following reasons:*

6(i). Perusal of the Mandays Chart [Annexure-A] and Reply-Affidavit points out that the petitioner was engaged in October 1987 and he continued in service till



February, 1989. The Mandays Chart [Annexure-A] indicates that the petitioner has not completed 240 days of continuous service in 12 calendar months preceding the date of his alleged oral dis-engagement or abandonment [as the case may be]. Admittedly, the petitioner slept over his rights from February 1989 for about 21 years till the filing of the instant petition on 15.07.2011.

**INACTION, LETHARGY AND NEGLIGENCE
DISENTITLED PETITIONER FOR RELIEF UNDER
INDUSTRIAL DISPUTES ACT:**

6(ii). Pertinently, at the time of his oral dis-engagement or abandonment from service in February 1989 the petitioner was bound to seek appropriate legal remedy as available to him under the relevant statutes. Notably, since the petitioner was a daily wager, the remedy available to him was to take recourse to Section 10 of the Industrial Disputes Act, 1947, which was not done.

**STATUTORY PROVISION OF SECTION 2(K) AND
SECTION 10 OF INDUSTRIAL DISPUTES ACT,
READS AS UNDER:**

**6(ii-a). SECTION 2(k) OF INDUSTRIAL DISPUTES
ACT, 1947**

(k) “industrial dispute” means **any dispute or difference** between employers and employers, or **between employers and**



workmen, or between workmen and workmen, which **is connected with the employment or non-employment or the terms of employment or with the conditions of labour**, of any person;

SECTION 10 OF THE INDUSTRIAL DISPUTES ACT, 1947

REFERENCE OF DISPUTES TO BOARDS, COURTS OR TRIBUNALS

10. Reference of disputes to Boards, Courts or Tribunals.

(1) Where the appropriate Government is of opinion that **any industrial dispute exists or is apprehended**, it may at any time, by order in writing,—

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c)

Provided further that where the dispute relates to a public utility service and a



notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this subsection notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

(2) **Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, 6 Labour Court, Tribunal or National Tribunal], the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.**

(2A) **An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:**

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or



National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.

In backdrop of the statute any dispute regarding employment or non-employment between a workman and an employer gave rise to “industrial disputes” but the inaction, slackness and negligency of the petitioner in not taking recourse to the statutory remedy available under the Industrial Disputes Act for 21 long years refrains, this Court from showing indulgence against oral termination and re-engagement with consequential benefits in instant proceedings.

**LIBERTY TO APPROACH APPROPRIATE
GOVERNMENT: DECLINED IN PECULIAR FACT-
SITUATION:**

6(iii). While dealing with the effect of delay



in demanding/making reference of the Industrial
Dispute to the Labour Court under Section 10(1) of
the Act, the “appropriate Government” has to perform
administrative function, by forming “opinion” as to
whether the disputes exists or is apprehended by
considering all relevant aspects. Delay is not the
sole but is certainly an important consideration for
framing of a reference, in case, the dispute exists or
is alive or has not become stale or has not faded away
or had not become non-existent. Liveliness of the
dispute is the fact, which is to be examined as to
whether the workman had agitated the grievance and
remained active or had slept over the remedy. An
explanation given for the delay, is to be considered
by the appropriate Government, while framing or
refusing to frame a reference in case, reference was
framed ignoring the fact that dispute had faded away
or had become stale or non-existent; then also, the
aggrieved employer is not remediless, who can assail
the order of framing reference in writ proceedings.
However, in case, on totality of facts and upon
considering various aspects including the delay, if



appropriate Government frames a reference then also, the issue of delay may be decided as preliminary issue by permitting parties to adduce evidence and while determining the question the delay may be a relevant factor for molding relief(s), in terms of the Full Bench Judgment of this Court in ***Jai Singh vs. State of Himachal Pradesh and others, CWP No. 2190 of 2020***, decided on 19.11.2020 and the operative part of the judgment, reads as under:

28. **Following principles of law can, therefore be culled out** from series of precedents discussed above, as to the **effect of delay in demanding /making reference of the industrial dispute to the Labour Court/Industrial Tribunal** under Section 10(1) of the Act:-
- i) That the function of the appropriate Government while dealing with question of making reference of industrial dispute under Section 10(1) of the Act, is an administrative function and not a judicial or quasi judicial function.
 - ii) That the Government before taking a decision on the question of making reference of the industrial dispute has to form a definite opinion whether or not such dispute exists or is apprehended.
 - iii) That whether or not the industrial dispute exists or is apprehended in the meaning of Section 10(1) of the Act can be decided by the appropriate Government alone and not by any other authority including by this Court.



- iv) That the **appropriate Government in discharging the administrative function** of taking a decision to make or refuse to make, reference of the industrial dispute under Section 10(1) of the Act, *has to apply its mind on relevant considerations and has not to act mechanically as a post office.*
- v) That while **forming an opinion** as to whether the industrial dispute exists or is apprehended, the appropriate Government is not entitled to adjudicate the dispute itself on merits.
- vi) That the delay by itself does not denude the appropriate Government of its power to examine advisability of making reference of the industrial dispute **but the delay would certainly be relevant for deciding the basic question whether or not the industrial dispute “exists” which also includes the decision to find out whether on account of delay the dispute has ceased to exist or has ceased to be alive or has become stale or has faded away.**
- vii) That **whether or not** a dispute is *alive* or *has become stale* or *non-existent*, would always depend on the facts of each case and **no rule of universal application can be laid down for the same.**
- viii) That even if Section 10(1) of the Act empowers the appropriate Government to **form an opinion “at any time” on the question whether any “industrial dispute” “exists or is apprehended”, and there is no time limit prescribed for taking such a decision,** yet such power has to be exercised by the appropriate Government within a reasonable time.
- ix) That the period for making reference of industrial dispute is co-extensive with the



existence of dispute because the factum of the “existence” or “apprehension of the dispute” is conditioned by the effect of the delay on the liveliness of the dispute.

- x) That the appropriate Government in arriving at the decision to make a reference of industrial dispute or otherwise, in the context of delay, may examine whether the workman or the Union has been agitating the matter before the appropriate fora so as to keep the dispute alive, which however, does not necessarily mean that in a case **where such action has not been initiated, the dispute has ceased to exist.**
- xi) That the appropriate Government can, as per Section 10(1) of the Act, take a decision on the question of making reference “at any time”, thus *implying that there is no limitation in taking such decision* and the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to such proceedings.
- xii) That the appropriate Government while taking a decision on the question of making reference, need not provide an elaborate opportunity of hearing to the workman *but it is under an obligation to consider his explanation for delay in making the demand.*
- xiii) That in cases where the appropriate Government while examining the question of making a reference of industrial dispute arrives at a decision that the question that on account of delay the dispute has ceased to exist or alive, would require elaborate examination of the evidence, it may while making a reference of the industrial dispute, additionally formulate question on this aspect to be decided as **preliminary issue** while simultaneously also making a reference on the industrial dispute to be decided as **secondary issue.**



- xiv) That even in a case where reference has been made to the Industrial Court after ***prolonged delay, such Court would be entitled to mould the relief*** by declining whole or part of the back wages.
- xv) That even when a reference is made by appropriate Government in a case after huge and enormous unexplained delay, the industrial Court would be entitled to return the reference since such Court judiciously exercises its wide jurisdiction under Section 11-A of the Industrial Disputes Act and is under obligation to consider whether in such like situation any relief at all could be granted to the workman.

In the backdrop of the Full Bench judgement of this Court in the case of **Jai Singh** [supra], though, in the normal parlance, this Court would have exercised the judicial discretion by permitting the petitioner to assert his rights/claim by invoking the statutory remedy under the Industrial Disputes Act but keeping in view the peculiar facts of instant case, once the petitioner had never raised a demand for framing of a reference under the Statute since his oral disengagement in February, 1999 or since date of the engagement of juniors in November, 1999 and even till their regularization in April, 1998 and in January, 2002 [as in Annexure-B to Annexure



P-3] but the petitioner chose to sleep over his rights and remedies for about 21 years [from date of alleged oral termination or abandonment and the engagement of juniors in 1989] and by his act and conduct he had remained inactive for about 9 to 11 years [since the regularization of juniors in 1998 to 2002] and has allowed the alleged dispute to become stale or become non-existent or ceased to be alive or fade away then, this Court refrains itself from exercising discretion in favour of the petitioner. Moreover, the factum of termination or abandonment was to be established by adducing evidence before the Statutory Forum under the Industrial Disputes Act and the petitioner having not given any plausible, cogent and convincing explanation for the delay disentitles the petitioner for relief in writ proceedings.

**CHALLENGE TO TERMINATION AND FOR
REGULARIZATION BEYOND LIMITATION UNDER
ADMINISTRATIVE TRIBUNALS ACT-BARRED:**

6(iv). Learned Counsel for the petitioner states after dis-engagement in February 1989, the juniors were engaged in November 1989 and 1991 who were



regularized ignoring the claim of the petitioner, is erroneous.

The above contention of Learned Counsel will not come to the aid of the petitioner, for the reason, that as per provision of Section 21 of the Administrative Tribunals Act, the limitation for filing an application, assailing oral termination and for engagement from date the juniors were engaged or for regularization was one year extendable by another 6 months, in case a representation against oral termination or abandonment was made. Nothing has been placed on record that after the oral termination/abandonment in February 1989 or after the engagement of juniors, if any, the petitioner had made a remedy to make representation under Section 20 of the Administrative Tribunal Act, before filing of an Original Application [subject to maintainability], within a period of one and half year under Section 21 of the Administrative Tribunal Act. In these circumstances, the petitioner having acquiesced by not availing the appropriate remedy destroys not only the remedy but also the right,



disentitling him for relief, in instant proceedings.

**DELAY, LACHES AND ACQUIESCENCE
DISENTITLES PETITIONER FOR RELIEF IN
INSTANT PROCEEDINGS:**

6(v). Now, coming to the validity of the instant proceedings, the material on record reveals that the petitioner was orally dis-engaged or was alleged to have abandoned the job in February 1989. Petitioner admittedly filed the instant petition in 2011, after a lapse of 21 years. Writ remedy is discretionary remedy. A person or an employee who intends to invoke the discretionary remedy of this Court under Article 226 of the Constitution of India is bound to invoke the remedy with clean hands and that too within a reasonable period. Inaction, negligence or lethargy of about 21 years cannot be the basis for either asserting or reviving a stale and dead cause. Having remained silent for 21 years shall result in destroying the right as well as remedy. Even, the assertion that juniors were retained or fresh persons were engaged is a herculean task to be examined after a delay of 21 years, in writ proceedings. Deprecating the practice of filing belated petition, leads to acquiescence which



leads to destroying not only the rights but also the remedy, as mandated by the Hon'ble Supreme Court in **Union of India and others vs. N. Murugesan and others (2022) 2 SCC 25**, as under :-

20. The **principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions.** However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. **Similarly, laches might be called a genus to a species by name acquiescence.** However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the Court.
21. The word **laches is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim** involving an equitable relief while causing prejudice to the other party. **It is neglect on the part of a party to do an act which law requires while**



asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the **length of the delay and the nature of acts done during the interval.** As stated, it would also involve acquiescence on the part of the party approaching the Court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy to a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the Court. **Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”**

6(v-a). While in service matters the delayed assertion of claim was negated by the Hon’ble Supreme Court in **Union of India and others versus C.Girija and others**, (2019) 15 SCC 633, **State of Madhya Pradesh versus Ramkumar Choudhary**, 2024 SCC OnLine SC 3612, **Chief Executive Officer and others versus S. Lalitha and others**, 2025 SCC OnLine SC 916 and **H. Guruswamy & Ors. versus A. Krishnaiah** Since deceased by LRs, **2025 SCC OnLine SC 54**. In view of the belated filing of the petition after 21



years from the date of alleged oral termination/
abandonment/engagement of juniors and belated
filing of petition by 9-11 years from date of
regularization of juniors and that too, without
any cogent and convincing explanation for the
delay, disentitles the petitioner for any relief in
writ jurisdiction.

JUDGMENT IN KISHORI LAL-INAPPLICABLE:

6(vi). Reliance placed by Learned Counsel for
petitioner on the judgment, in case of **Kishori
Lal** versus **Himachal Pradesh State Electricity
Board Limited and others, CWP No.6832 of
2012**, decided on 22.08.2012 [*Annexure P-6*], will
come to the aid of the petitioner, *for the reason*, that
in the case of **Kishori Lal (supra)**, this Court had not
at all adjudicated upon the entitlement for re-
engagement on the principle of “last come first go”
but the Court had left it open to the Authorities
to engage him, in case work was available for
which additional manpower was needed.

**RIGHTS OF JUNIORS CANNOT BE UNSETTLED
AFTER 21 YEARS:**

6(vii). Even, the claim of the petitioner vis-à-vis



juniors is negated, for the reason, that the juniors have acquired rights in the interregnum and they are not party-respondent(s) in instant proceedings. Unsettling the settled rights of juniors and that too in their absence, refrains this Court, from showing indulgence after 21 years in instant proceedings. In these circumstances, this Court does not find any merit, in the claim of the petitioner, in instant proceedings.

DIRECTIONS:

7. In view of the above discussion and for the reasons recorded hereinabove, the instant petition is **dismissed**, *in the following terms:*

- (i). Claim assailing oral disengagement of February, 1989 and consequential benefits after 21 years, disentitles the petitioner for any relief;
- (ii). Acquiescence, delay and laches disentitles the petitioner for relief after 21 years;
- (iii). In fact-situation of instant case, the Industrial Dispute [alleging termination in February 1989 and denial of engagement when juniors were engaged in November 1989 and 1991] having faded away, become stale and non-existent and without there being explanation for delay; disentitles the petitioner for any relief(s);



(iv). Parties to bear respective costs.

In aforesaid terms, the instant petition is disposed of along with all pending miscellaneous application(s), if any, shall also stand disposed of.

(Ranjan Sharma)
Judge

28th November, 2025
[himani]