



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

LPA No.19 of 2020
Reserved on: 24.07.2025
Announced on: 28.11.2025

Kamal Kumar ...Appellant

Versus

HPSEB Limited & Another ...Respondents

Coram:

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting?. Yes.*

For the appellant: Mr. Nishant Khidtta, Advocate
for Mr. V.D. Khidtta, Advocate,
for the appellant.

For the respondents: Ms. Sunita Sharma, Senior
Advocate with Mr. Dhananjay
Sharma, Advocate, for HPSEBL-
Respondents.

Ranjan Sharma, Judge

Appellant, Kamal Kumar, being the workman,
has come up before this Court assailing the judgment
dated 28.09.2018 [Annexure A-1] ***[referred to as the
Impugned Judgment]***, passed by the Learned Single
Judge in CWP No.9722 of 2012 in *Re: Kamal Kumar
versus HPSEB Limited and another*, whereby, the
appellant has been granted the relief of monetary
compensation of Rs. 2,00,000/- [Rupees Two Lakh

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



Only] in lieu of reinstatement with directions to Respondent-Board to disburse compensation within six weeks from date of judgment with interest at the rate of 12% per annum commencing from the expiry of six weeks till realization; *with prayer to* set-aside the Impugned Judgment and for reinstating the appellant-workman herein, in service with all consequential benefits.

PROCEEDINGS BEFORE LABOUR COURT AND WRIT COURT:

2. For appreciating the claim in instant Intra-Court Appeal-LPA, the factual matrix detailing the proceedings instituted by the workman herein, before Learned Labour Court-cum-Industrial Tribunal and thereafter before Learned Writ Court is narrated hereinunder:

PROCEEDINGS BEFORE LABOUR COURT:

3. *In proceedings originating from Reference No.89 of 2001,* before Learned Labour Court-cum-Industrial Tribunal, the Appellant-Workman filed a *Statement of Claim* on 22.09.2002 by setting up a case that he served as a T-Mate, on daily wage basis in the Respondent-Board [HPSEBL] w.e.f. 1985



to 20.03.1992 and had completed more than 240 days of service but his services were disengaged without complying with the provisions of Section 25-F of the Industrial Disputes Act and also in violation of Clause 14 of the Standing Orders and by violating the principle “*Last Come First Go*” and by engaging fresh persons in violation of Section 25-H of the Industrial Disputes Act. It was averred by the Appellant-Workman that he did not abandon the job and the disengagement was illegal and the Appellant-Workman deserves to be reinstated in service with benefits of seniority and back wages, etc.

3(i). Respondent-Board filed a Reply to the Statement of Claim, stating that in view of the Rural Electrification Programme, the Appellant-Workman and others who belong to adjoining villages were engaged on daily wage basis on different occasions for specific piece of work from 23.01.1992 to 22.02.1992 and from 21.02.1992 to 20.03.1992. The stand of the Board was that the Appellant-Workman had worked only for three months i.e. for 58 days in totality.

3(ii). No rejoinder was filed by the Appellant-



Workman in the proceedings before Learned Labour Court-cum-Industrial Tribunal. On 24.09.2005, the Appellant-Workman-Kamal Kumar stepped in witness box as PW-1 and on 18.11.2008, the statement of Shri I.P. Singh, Assistant Engineer of the Board was recorded as RW-1.

AWARD DATED 09.07.2009 PASSED BY LABOUR COURT:

3(iii). The Labour Court-cum-Industrial Tribunal, passed an *Award on 09.07.2009 [Annexure P-3 in writ file] answering the reference by dismissing* the claim of the Appellant-Workman for reinstatement in service with consequential benefits ; with the findings, that the Appellant-Workman had failed to prove that he had worked for 240 days in 12 calendar months preceding his termination *and* no evidence was led to establish that juniors are still working *and* the termination for non-compliance of Section 25-F of the Industrial Disputes Act *and* for non-compliance of Rule 14(ii) of the Standing Orders of the Board in not giving 10 days' notice. Negating the above contentions, claim of the workman was dismissed by Labour Court on 09.07.2009 **(supra)**.



CHALLENGE TO AWARD DATED 09.07.2009
[ANNEXURE P-3] BEFORE WRIT COURT IN CWP
NO.9722 OF 2012:

4. The Award dated 09.07.2009 [Annexure P-3] was assailed by the Appellant-Workman-Kamal Kumar herein, in CWP No. 9722 of 2012 with the prayer for quashing Award and seeking reinstatement in service with all benefits on the ground, that the Learned Labour Court ignored that juniors were retained *and* since on the basis of *Attendance-Sheet i.e. Annexure P-1*, had completed 240 days therefore, non-compliance of Section 25-F of the Industrial Disputes Act and Rule 14 of the Standing Orders and based on Attendance-Sheet [as in Annexure P-II], the appellant had worked from 1985 to 1992 under the Respondent-Board.

4(i). Respondent-Board filed the Reply-Affidavit dated 01.12.2012, with the stand that the Appellant-Workman was engaged as T-Mate on daily wage from 23.01.1992 to 20.03.1992 and he left the job on his own sweet-will. Reply-Affidavit indicates that the Appellant-Workman did not complete 240 days in any calendar year. Plea regarding the claim



being time-barred was also raised. In Paras 6 & 7 of the Reply-Affidavit, Respondent-Board stated that the Appellant-Workman has failed to establish his claim before Labour Court by adducing reliable and cogent evidence.

4(ii). *Appellant-Workman chose not to file any rebuttal-rejoinder to the Reply filed by the Respondent -Board.*

IMPUGNED JUDGMENT DATED 28.09.2018
[ANNEXURE A-1] PASSED BY LEARNED SINGLE
JUDGE:

4(iii). Learned Single Judge decided CWP No 9722 of 2012 on 28.09.2018 [*Annexure A-1, herein*], whereby, the Award dated 09.07.2009 [*Annexure P-3, in writ file*] was set-aside but relief of reinstatement was declined and in lieu of reinstatement, lump sum-monetary compensation of Rs.2,00,000/- [Rupees Two Lakh Only] was awarded to the Appellant-Workman with directions to disburse the amount within six weeks, failing which, aforesaid amount was to carry interest at the rate of 12% per annum. The operative part of the judgment passed by the Learned Single Judge, on 28.09.2018 [*Annexure A-1*],



reads as under:

5. However, the **aggrieved workman, rendered less than 240 days of continuous service, preceding his being purportedly disengaged by his employer, and, also when his purported disengagement occurred in the year 1992, besides when** the Hon'ble Apex Court in a judgment rendered **Bharat Sanchar Nigam Ltd. vs. Man Singh**, reported in 2012(3) SLR 344 (S.C.), the relevant paragraph No.6 whereof stands extracted hereinafter:

“6. In view of the aforementioned legal position and the fact that the respondents-workmen were engaged as 'daily wagers' and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet ends of justice.”

- (a) has, upon the **afore factual scenario held, that, it would be unjustifiable to afford relief of reinstatement, rather the affording of relief of monetary compensation, being the befitting remedy.** Consequently, while applying, the mandate thereof, the relief of reinstatement is declined, vis-a-vis, the petitioner, whereas, relief of monetary compensation comprised in a sum of Rs. 2,00,000/- (Rs Two lacs only), is awarded, vis-a-vis, the aggrieved workman/petitioner herein. The aforesaid amount shall be disbursed, to the petitioner/ workman, by his employer, within, a period of six weeks from today, and, in case failure of disbursement thereof, to, the aggrieved workman /petitioner, **it shall carry interest @ 12 % per annum** commencing, from, six weeks hereafter till



realization thereof.

6. For the foregoing reasons, the **award impugned before this Court, is set aside**, and, the instant petition stands disposed, of, in the manner aforesaid.”

CHALLENGE TO IMPUGNED JUDGMENT DATED 28.09.2018 [ANNEXURE A-1] IN PRESENT INTRA COURT APPEAL-LPA:

5. Appellant-workman-Kamal Kumar assailed the Impugned Judgment dated 28.09.2018 [Annexure A-1] on the ground, *firstly*, the Learned Single Judge did not consider the facts and evidence on record that appellant-workman served in the Respondent-Board from 1985 till 20.03.1992 till his services were orally dis-engaged and ignored that the juniors were retained and fresh persons were engaged; *and secondly*, once the Respondent-Board has failed to produce the Mandays of the appellant-workman then, adverse inference was drawable; *thirdly*, once the plea of abandonment was established, then, instead of granting the monetary-lump sum compensation, the appellant should have been reinstated with continuity in serve and seniority and also granted regularization by Learned Single Judge and *lastly*, even monetary compensation of Rs 2,00,000/-[Rupees



Two Lakh Only] was very meagre with the prayer to direct the reinstatement of the appellant with all consequential benefits.

6. Heard, Mr. Nishant Khidtta, Advocate vice Mr. V.D. Khidtta, Advocate for the appellant, and Ms. Sunita Sharma, Learned Senior Counsel assisted by Mr. Dhananjay Sharma, Advocate for Respondents and have perused the record(s).

ANALYSIS OF CONTENTIONS OF APPELLANT-WORKMAN IN LPA:

7. *First contention* of Learned Counsel for the Appellant-Workman that the Learned Single Judge did not consider facts and evidence on record to show that the Appellant-Workman-Kamal Kumar had worked with the Respondent-Board from 1985 till 20.03.1992 and ignored that the juniors were retained and fresh persons were engaged by the Respondent-Board.

The above contention is misconceived, for the reason, that *firstly*, the Respondent-Board had specifically stated in the reply filed before the Labour Court [at page 21 of Labour Court File] that *Appellant-Workman had worked for three months*



[i.e. 58 days] under Rural Electrification Programme from 23.01.1992 to 20.02.1992 and from 21.02.1992 to 20.03.1992 for specific piece of work; and *secondly*, the Respondent-Board has averred that the Appellant -Workman never reported for duty after 20.03.1992; and *thirdly*, even the Reply-Affidavit filed before the writ court establishes that the appellant-workman was engaged as T-Mate on daily wages from 23.01.1992 to 20.03.1992 and he had not completed 240 days in calendar year and averments that the juniors were retained and fresh persons were engaged were denied by the Respondent-Board; and *fourthly*, the reliance placed by the appellant-workman on *Annexure P-1*, [at pages 10 to 34 in the writ file] cannot be of any assistance to the appellant-workman for the reason, that Attendance Sheets in Annexure P-1 have neither been signed nor authenticated by the competent Authority *and* these Attendance-Sheets pertain to the period from April 1987 to May, 1989, which nowhere prove that the appellant-workman had completed 240 days of continuous service in twelve calendar months preceding his termination/



abandonment on 20.03.1992. Nothing has been placed on record which establishes that the juniors were retained or fresh persons were engaged; and *fifthly*, a perusal of records, including the *Zimni* Orders of proceedings before Learned Labour Court reveals that the Respondent-Board was proceeded against *ex-parte* on 27.04.2005 and this order was set aside on 14.03.2006. Issues were framed and the appellant-workman was directed to furnish List of PW's within one month along with the Process-Fee and Diet Money but the appellant-workman chose not to avail such opportunity. Though, the statement of the appellant-workman was recorded as PW-1 on 24.09.2005 but after setting aside of *ex-parte* order dated 27.04.2005 on 14.03.2006, the Respondent-Board vide orders dated 08.05.2007 was afforded an opportunity to cross-examine PW-1 for 08.08.2007 but in vain. In terms of orders dated 08.05.2008, no steps were taken by the appellant-workman for calling other PWs. The *Zimni* Orders dated 08.05.2008 reveal that no steps were taken by the appellant-workman for calling other PWs. Even the Labour



Court passed an order on 30.06.2008 permitting the appellant-workman to produce the PWs on self-responsibility for 26.07.2008, as last opportunity but still the appellant-workman failed to produce other PWs. Thereafter on 18.11.2008, the Respondent Witness [RW] was led and case of the Respondent-Board was closed. The *Zimni* Orders reveal that the appellant-workman, Kamal Kumar failed to summon other PWs so as to assert and establish that he had worked for 240 days preceding his alleged dis-engagement/ abandonment on 20.03.1992 and to establish that the juniors were retained and fresh persons were engaged and *sixthly*, the appellant-workman had failed to discharge his initial burden that he had rendered continuous service for 240 days, preceding alleged dis-engagement /abandonment on 20.02.1992, which was not so done and; *lastly*, having failed to discharge the initial burden of having rendered 240 days of continuous service preceding his disengagement coupled with the inaction of appellant-workman to assert and establish his case, by way of adducing evidence of co-workers /



other PWs or in such other manner in accordance with law. In these circumstances, Learned Single Judge refused to grant the relief of reinstatement but granted the monetary-lumpsum compensation to the appellant-workman for having rendered only 58 days of service. In this backdrop, the Impugned Judgment does not suffer from any infirmity.

8. *Second contention* of Learned Counsel for the appellant-workman is that Learned Single Judge failed to draw adverse inference, as the Respondent -Board failed to produce documents which establish his claim for reinstated in service, with seniority and back wages.

The above contention is misconceived, for the reason, that *firstly*, the presumption for drawing adverse inference is optional; and *secondly*, in fact situation of this case, once there is no intentional non-production, therefore, adverse inference was not drawable; and *thirdly*, though, the Indian Evidence Act is not strictly applicable to the proceedings before Labour Court but the principles of evidence are applicable. The appellant-workman had set up



a case that he had completed 240 days of service preceding his alleged dis-engagement/abandonment on 20.03.1992 and his juniors were retained and fresh persons were employed therefore, the initial burden was on the appellant-workman to establish that he had rendered 240 days of service preceding alleged termination/abandonment [on 20.03.1992] either by adducing oral or documentary evidence in consonance with settled principles of evidence, which was not done. Perusal of records, including *Zimni* Orders passed by Labour Court indicates that the appellant-workman chose neither to call other PWs or to produce PWs on self-responsibility and the appellant chose not to call for any specific records [including Mandays etc.] so as prove-establish that he had rendered continuous service of 240 days and that his juniors were retained and/or fresh persons were engaged. In facts of instant case, once there was no intentional non-production of records by the Respondent-Board, in view of the fact that the petitioner chose not to call for any such records therefore, adverse inference was not drawable



and the contention of the petitioner is devoid of any merit.

PLEA OF APPELLANT-WORKMAN FOR DRAWING ADVERSE INFERENCE AGAINST EMPLOYER-BOARD UNTENABLE:

8(i). Failure on the part of workman to adduce evidence by neither calling or producing his witnesses [PW's] nor in calling/summoning the Employer for any document(s) cannot form the basis for drawing adverse inference against an employee, in view of the mandate of the Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad v. Siri Niwas, (2004) 8 SCC 195***, in following terms:

“13. The provisions of the **Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are, however applicable.** It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. **The burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment.** In terms of Section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

- (i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;



- (ii) payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months.

14. For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, *has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service.* By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. **As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls.** It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned



period. **He even did not examine any other witness in support of his case.**

15. A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. **Presumption as to adverse inference for non-production of evidence is always optional** and one of the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such ***intentional non-production may be found to be justifiable on some reasonable grounds.*** In the instant case, the Industrial Tribunal did not draw any adverse inference against the Appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the Respondent.”

8(ii). The plea of drawing adverse inference is untenable when, the workman had failed to produce evidence so as to discharge his initial burden [of having rendered continuous service of 240 days and on other issues regarding the retention of juniors and engaging fresh persons]. Mere non-production of some documents cannot lead to presumption of adverse inference, in view of the mandate of by



the Hon'ble Supreme Court, in ***State of Uttarakhand and Others v. Sureshwati, (2021) 3 SCC 108***, in following terms:

- "25. On the basis of the evidence led before the Labour Court, we hold that the School has established that the Respondent had abandoned her service in 1997, and had never reported back for work. **The Respondent has failed to discharge the onus to prove that she had worked for 240 days' in the preceding 12 months prior to her alleged** termination on 8.3.2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days' in the twelve months preceding the date of her alleged termination on 8.3.2006, which she failed to discharge.
26. A division bench of this Court in Bhavnagar Municipal Corpn. v. **Jadeja Govubha Chhanubha** held that:
- "7. It is fairly well-settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, **it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25-B of the Industrial Disputes Act, 1947.** For the respondent to succeed in that attempt he was required to show that he was in service for 240 days in terms of Section 25-B (2) (a) (ii). **The burden to prove that he was in actual and continuous service of the employer for the said period lay squarely on the workman.** The decisions of this Court in Range Forest Officer v. S.T. Hadimani, Municipal Corpn., Faridabad v. **Siri Niwas**, M.P.



Electricity Board v. **Hariram**, Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan, 2004 SCC (L&S) 1055], Surendranagar District Panchayat v. **Jethabhai Pitamberbhai**, and **R.M. Yellatti** v. Executive Engineer unequivocally recognise the principle that the burden to prove that the workman had worked for 240 days is entirely upon him. **So also the question whether an adverse inference could be drawn against the employer in case he did not produce the best evidence available with it, has been the subject-matter of pronouncements of this Court in Municipal Corpn., Faridabad v. Siri Niwas and M.P. Electricity Board v. Hariram [M.P. Electricity Board v. Hariram, reiterated in RBI v. S. Mani. This Court has held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it."**

In backdrop of the factual matrix and the mandate of law this Court has no hesitation to hold that once the appellant-workman had failed to adduce evidence for establishing his case before the adjudicatory statutory forum i.e. Labour Court, despite being under a legal obligation to do so and for which an opportunity was granted but was not availed of, as discussed hereinabove; therefore, the inaction, omission and conduct, disentitles him



for relief of reinstatement. In these circumstances, Impugned Judgment passed by Learned Single Judge on 28.09.2018 [*Annexure A-1*], granting lumpsum monetary compensation, in lieu of reinstatement is upheld.

9. *Third contention* is that the Learned Single Judge ignored that once the plea of abandonment was not established then, petitioner should have been reinstated with benefit of regularization instead of granting lump-sum compensation.

The above plea is misconceived for the reason, that the appellant-workman had failed to discharge his initial burden of having rendered 240 days of continuous service preceding alleged termination/abandonment by adducing cogent and convincing evidence. Even mere abandonment can neither confer an automatic right of reinstatement with all service benefits nor any claim for permanency-regularization, when, the appellant-workman herein, had rendered only 58 days of service and Attendance-Sheets [*Annexure P-I with writ petition*] have no legal sanctity in view of the fact that the aforesaid



documents have neither been authenticated nor do they bear the signatures of the issuing-competent authority. Besides this, these documents relate to the period from April 1987 to May 1989, which in no manner establish that the appellant-workman has rendered 240 days of continuous service in 12 calendar months preceding his dis-engagement/ abandonment [on 20.03.1992]. Even, the Attendance -Sheets in *Annexure P-1* have not been proved by the petitioner in accordance with law. Rendering 58 days of actual service [before 20.03.1992] does not confer any right on the appellant-workman for regularization or for permanency under any rule or regularization policy or scheme framed by the Respondent Board. The appointment of the appellant-workman having been made in violation of the ethos of the Constitutional Scheme of public employment in Articles 14 & 16 of the Constitution of India renders the appointment of the appellant illegal and such illegal appointment cannot be cured by taking recourse to regularization, as per the mandate of the Hon'ble Supreme Court in **(2005) 5 SCC 100**,



Manager, Reserve Bank of India, Bangalore versus

S. Mani and Others, in the following terms:-

28. The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. **It held that the burden of proof was upon the Appellant on the premise that they have failed to prove their plea of abandonment of service** stating:

"It is admitted case of the parties that all the 1st parties under the references CR No. 1/92 to 11/92 have been appointed by the 2nd party as ticca mazdoors. As per the 1st parties, they had worked continuously from April, 1980 to December, 1982. But the 2nd party had denied the above said claim of continuous service of the 1st parties on the ground that the 1st parties has not been appointed as regular workmen but they were working only as temporary part time workers as ticca mazdoor and their services were required whenever necessary arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the 1st party, since the 2nd party had denied the above said claim of continuous period of service, it is for the 2nd party to prove through the records available with them as the relevant records could be available only with the 2nd party."

29. The Tribunal, therefore, accepted that the Appellant had denied the Respondents' claim as regard their



continuous service.

30. In Range Forest Officer vs **S. T .Hadimani** (2002) 3 SCC 25, it was stated:

"3...In our opinion the **Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant.** It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

31. In **Siri Niwas** this Court held:

"14As noticed hereinbefore, the burden of proof was on the workman. From the Award **it does not appear that the workman adduced any evidence whatsoever in support of his contention** that he complied with the requirements of Section 25-B of the Industrial Disputes Act. **Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls.** It is improbable



that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. **He even did not examine any other witness in support of his case."**

32. Yet again in **Hariram (supra)**, it was opined:

"10... We cannot but bear in mind the fact that **the initial burden of establishing the** factum of their continuous work for 240 days in a year rests with the respondent applicants.

35. Only **because the Appellant failed to prove their plea of abandonment of service by the Respondents, the same in law cannot be taken to be a circumstance that the Respondents have proved their case.**

52. Yet again, in Executive Engineer, ZP Engg Divn. And Another Vs. **Digambara Rao** and Others (2004) 8 SCC 262 this Court held:

"20. It may **not be out of place to mention that completion of 240 days of continuous service in a year may not by itself be a ground for directing an order of regularization. It is also not the case of the Respondents that they were appointed in accordance with the extant rules. No direction for regularization of their services was, therefore, could be issued."**

55. In Haryana State Coop. Land Dev. Bank Vs. **Neelam** [JT 2005 (2) SC 600], this Court observed:



"18. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. **The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings.** A person in certain situation may even be held to be bound by the doctrine of **Acceptance Sub silentio.**"

Right of regularization is available to a person who is appointed in accordance with the Constitutional Scheme of Articles 14 and 16 of the Constitution of India and not to a person, who was appointed illegally and by way of a back-door methodology. The appellant-workman herein has neither pleaded nor proved that his appointment was against sanctioned post, after due advertisement after considering all eligibles who applied and after determining the comparative merit of all candidates. Absence of these factors leads to the conclusion that the appointment of the appellant-workman was de hors the Constitutional Scheme. In this situation,



acceding to the prayer of the appellant-workman for reinstatement shall certainly perpetuate illegality which is impermissible in law. Based on cumulative analysis, the Impugned Judgement refusing the relief of reinstatement to the appellant-workman, a back-door or illegally appointed incumbent does not suffer from any perversity, infirmity or illegality and the contention of Learned Counsel for the appellant is turned down.

10. *Last contention* of the Learned Counsel for the appellant is that lump sum compensation of Rs. 2,00,000/- [Rupees Two Lakh Only] is meagre amount.

The above contention is misconceived. The records of the Labour Court-cum-Industrial Tribunal establish that the appellant-workman had worked for 58 days only from 23.01.1992 to 22.02.1992 and from 21.02.1992 to 20.03.1992, [as per Exhibit PW-1/B and Exhibit PW-1/F]. The appellant-workman failed to either summon his co-workers so as to establish that he had in fact worked for 240 days preceding 20.03.1992. Even, appellant-workman



has failed to discharge his initial burden of having completed 240 days service preceding dis-engagement /abandonment on 20.03.1992. Mere rendering of 58 days of service cannot form basis for saddling the Respondent-Board with liability of reinstatement with back wages, seniority and regularization, in view of the fact, that there is neither any Rule nor any Policy framed by the Respondent-Board which provides for regularization of a daily wager or muster-roll or a worker alike the appellant for regularization, on the basis of 58 days of service rendered in the Respondent Board. In addition, considering the fact that the services of the appellant-workman were discharged/abandoned about (33 years) thirty years ago and the fact that the appellant had failed to prove that appellant-workman was appointed against a sanctioned post in accordance with the Constitutional Scheme of Articles 14 & 16 and absence of “these constitutional and legal mandates” leads to the logical inference that initial appointment was illegal. That being so, once the initial appointment is illegal, then, such an illegality can neither be permitted



to be perpetuate nor service benefits are claimable on the basis of the illegal appointment. Thus, for having rendered service of 58 days only in 1992 about 33 years ago and the fact that appellant-workman had raised the industrial dispute after about 09 years [from 1992 to 2002] and the fact that the appellant has now attained 60 years of age and absence of proof that the juniors were retained and fresh persons were engaged and were regularized therefore, Impugned Judgement denying the relief of reinstatement but in granting the lump sum compensation of Rs 2,00,000/- [Rupees Two Lakh Only], being fair, just and reasonable compensation, does not call for no any interference and is upheld.

**IMPUGNED JUDGMENT GRANTING LUMP SUM
COMPENSATION IS VALID IN VIEW OF
ADDITIONAL FACTORS:**

11. In the light of the material on record placed before Learned Labour Court and even before Learned Single Judge, the claim of the appellant-workman for reinstatement with continuity in service with seniority, back wages and regularization, is not tenable, for the reason that even if, his services



were terminated/abandoned on 20.03.1992 but the appellant-workman slept over his rights/ remedy for 09 years till raising an Industrial Dispute, leading to the framing of Reference No 89 of 2001. Now, the appellant-workman has attained 60 years of age. Even nothing has been adduced by way of cogent and convincing evidence to establish that the juniors were retained or fresh persons were engaged. The appellant has failed to discharge initial burden of having rendered 240 days of service in twelve months preceding 20.03.1992. The appellant-workman had in fact worked for 58 days from 23.01.1992 to 21.02.1992 and from 22.02.1992 to 20.03.1992. The appellant-workman had neither pleaded nor established that his initial engagement was against a sanctioned post after complying with the ethos of the Constitutional Scheme of public employment in Articles 14 & 16 of the Constitution of India. Absence of any assertion and cogent and convincing material, leads to logical conclusion that initial appointment of the appellant-workman was by way a backdoor methodology and was illegal. The initial appointment



being illegal coupled with the fact that the appellant workman had rendered 58 days service [preceding termination/abandonment on 20.03.1992] will not confer any right for automatic reinstatement. Reliance placed by appellant-workman on Attendance-Sheets [as in Annexure P-1, in writ file], cannot be of any assistance in view of the fact that documents [as in Annexure P-1], neither bear the signatures nor have these documents been authenticated by the Competent Authority. Even otherwise, these Attendance-Sheet(s) only relate to the period from April 1987 to May 1989, which cannot be of any assistance for the appellant to assert and establish that the workman had rendered 240 days of continuous service in preceding 20.03.1992. Factum regarding retention of juniors or engaging fresh persons was also not established-proved in the proceedings below. Conduct of the appellant in sleeping over the matter from date of dis-engagement on 20.03.1992 till framing of Reference in 2001 for 9 years is sufficient to infer acquiescence against the appellant. Even the conduct of the appellant in proceedings before the Labour



Court in neither taking steps nor in adducing evidence of other PW's and also in not calling for/summoning documents from the Respondent-Board despite having been afforded various opportunities by the Learned Labour Court disentitles the appellant for any relief(s). Even, before the Writ Court, nothing cogent/convincing has been placed on record by appellant to establish any perversity or illegality in the Impugned Judgment. In these circumstances, the Impugned Judgment dated 28.09.2018 [*Annexure A-1, herein*], denying the relief of reinstatement in service but in granting lump sum compensation of Rs 2,00,000/- [Rupees Two Lakh Only] to the appellant-workman for having rendered 58 days of service in the year 1992, does not call for any interference in present appeal.

RELIANCE ON JUDGEMENTS BY APPELLANT COUNSEL-MISPLACED:

12. Learned Counsel for the appellant-workman Mr. Nishant Khidtta, places reliance on the judgments in cases of Bharat Sanchar Nigam Limited vs. Bhurumal, (2014) 7 SCC 177; Tapash Kumar Paul v. BSNL, (2014) 15 SCC 313; Gauri Shanker vs. State of Rajasthan, (2015) 12 SCC 754; Machinon



Mackenzie & Company Ltd. vs Machinnon Employees Union, Civil Appeal No 5319 of 2008; and Jeetubha Khansangji Jadeja vs Kutchh District Panchayat, Civil Appeal No 6890 of 2022.

12(i). Reliance placed by Learned Counsel on the judgment in the case of ***Bhurumal (supra)***, is misplaced, for the reason that aforesaid judgment is distinguishable, inasmuch as the adverse inference was drawn in view of the fact that on the basis of day-to-day diaries maintained by employee, which were never disputed by employer and claim founded, on such diaries, was accepted in that case.

12(ii). Reliance placed on the judgment in the case of ***Tapash Kumar Paul (supra)***, cannot be of any assistance to the appellant, for the reason, that the aforesaid judgment deals with a situation that if an employee has superannuated or is on the verge of retirement therefore, in such a situation, instead of reinstatement, the relief of monetary-lumpsum compensation would meet the ends of justice.

12(iii). Reliance placed on the judgment in the



case of **Gauri Shanker (supra)**, is misplaced, when, in the aforesaid case, an adverse inference was drawn, due to non-production of muster roll despite the same being summoned, whereas, that the fact situation is different in present case, as the *Zimni* Orders passed by the Labour Court establishes that appellant-workman has failed to substantiate his claim by examining other prosecution witnesses or by summoning relevant records, which was not done.

12(iv). The judgment in **Jeetubha Khansangji Jadeja (supra)** is distinguishable. In the said case, the respondent-management i.e. the Kutchh District Panchayat had taken the stand that the entire muster roll record was not available, as it had been destroyed and could not be produced. Since the facts of instant case are clearly at variance as the appellant-workman had failed to call or summon records then, the inaction or omission or negligence of the appellant cannot be the basis for drawing an adverse inference against the Board-Employer, in instant matter.



12(v). Likewise, the judgment in the case of ***Prakash Chand, (supra)*** is based on distinct facts, whereby, the daily wager had served in Forest Division Suket, Sundernagar, for 02 years from March 2001 to March 2003 and he had established that juniors were retained or fresh persons were engaged leading to violation of Section 25-B, 25-F 25-G and Section 25-H of the Industrial Disputes Act therefore, the Award directing reinstatement with continuity in service was upheld by Learned Single Judge, in the case of ***Prakash Chand (supra)***. The fact-situation in instant case, is at variance wherein, the appellant-workman has failed to establish non-compliance of 25-F or 25-G or 25-H of Industrial Disputes Act. Moreover, the scope of interference in the Intra-Court Appeal is limited to testing the veracity of the judgment passed by Writ Court. In Intra-Court Appeal (LPA), this Court cannot resort to a wholesome reappreciation of facts but has to primarily confine itself to infraction of Constitutional or Statutory violation(s) or testing glaring perversity or infirmity of illegality in the Impugned Judgement



dated 28.09.2018 [Annexure A-1], passed by Learned Single Judge. Once no such infraction is apparent in the fact-situation of instant appeal, therefore, the Impugned Judgement is upheld.

**MANDATE OF LAW GRANTING LUMP SUM
COMPENSATION IN LIEU OF REINSTATEMENT:**

13. Based on the principles outlined by the Hon'ble Supreme Court and the Division Bench of this Court in ***LPA No 136 of 2025***, titled ***State of Himachal Pradesh & Others versus Pal Singh***, decided on 08.05.2025 and in ***CWP No 1692 of 2016***, titled ***H.P. State Financial Corporation versus Rakesh Kumar Negi***, decided on 13.05.2025 and ***LPA No.46 of 2025*** along with connected matters, titled as ***Mehar Chand versus Executive Director (Personnel) and another***, decided on 28.06.2025, the grant of lump sum monetary compensation, in lieu of reinstatement towards full and final settlement of the dispute is upheld, by negating the claim for reinstatement when, the appointment was not made in accordance with the Statutory Rules or Constitutional Scheme and the period of service was short and such service was rendered without any



vacancy and the fact that the alleged dis-engagement took place in March 1992 i.e. about 33 years back coupled with the fact that the Industrial Dispute was raised after about 09 years and the fact that the appellant-workman had attained the age of superannuation being almost 60 years now and the fact that the appellant-workman has failed to adduce evidence that he had rendered continuous service of 240 days in 12 calendar months preceding termination/abandonment {on 20.03.1992} and has failed to establish that the juniors were retained or fresh persons were engaged by Respondent Board. Failure to adduce evidence, a legal obligation and despite having been afforded opportunity amounts to **“Accepted Sub-Silentio”** and **“Acquiescence and Waiver by Conduct”**, disentitling the appellant for laying a challenge to the findings recorded by the Learned Single Judge, made after due appreciation of the material on record, does not call for any interference.

14. Considering the facts and circumstances and the material on record, this Court is of the



considered view, that the Impugned Judgement dated 28.09.2018 [Annexure A-1] passed by the Learned Single Judge, after due appreciation of the material *and* adduced evidence on record *and* declaration of law; which reinforces the grant of lumpsum compensation towards the full and final settlement of the dispute, in lieu of reinstatement with other consequential benefits; for having **served for only 58 days** under the Respondent Board *during the period 1992 and* the fact that the ***Industrial Dispute was raised after about 9 years; and had crossed the age of superannuation of 60 years and has failed to discharge his initial burden of having rendered 240 days*** of service preceding termination/abandonment and had ***failed to adduce evidence despite opportunity*** regarding the retention of juniors and engagement of fresh persons and had also ***failed to establish that his initial appointment was made after due compliance of the ethos of the Constitutional Scheme*** governing public employment in Articles 14 and 16 of the Constitution of India ***against a sanctioned post***



and the appellant has failed to establish that any Rule-Policy-Scheme existed which entitled appellant for regularization on the basis of 58 days of daily waged service; and based on other parameters as discussed hereinabove; instant appeal is devoid of any merit and same must fail. Ordered accordingly. Resultantly, Impugned Judgement dated 28.09.2018 [Annexure A-1], is upheld.

DIRECTIONS:

15. In view of the above discussion and for the reasons recorded herein, the *Intra-Court Appeal* is ***dismissed***, in following terms:

- (i). ***LPA No 19 of 2020***, Kamal Kumar versus HPSEB Limited and another, ***dismissed*** ;
- (ii). *Impugned Judgment dated 28.09.2018 [Annexure A-1]* passed by the Learned Single Judge in CWP No 9722 of 2012 Kamal Kumar versus HPSEB Limited & Another, granting monetary-lumpsum compensation of Rs 2,00,000/- [Rupees Two Lakh Only] with default liability to the appellant-workman, *is upheld*;
- (iii). Impugned Judgement declining the prayer for reinstatement with continuity in service, seniority and back wages



for having rendered only 58 days of service under the Respondent-Board is does not calls for any interference;

- (iv). Respondent-Board shall comply with the judgment passed by Learned Single Judge [if not already complied] within six weeks from today;
- (v). Parties to bear respective costs.

In aforesaid terms, the present *Intra-Court Appeal* and all pending miscellaneous application(s), if any, shall stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

November 28th, 2025
[Shivender]