IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.601 of 2025
Decided on : 26.05.2026

Registrar Maharishi Markandeshwar Medical College.
...Appellant

Versus

Padam Kumar ...Respondent.

Coram

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

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the appellant : Ms. Sneh Bhimta, Advocate.

For the respondent : Mr. Aakash Thakur, Advocate.

Bipin Chander Negi, Judge

By way of the present petition, a challenge has been laid to the judgment dated 11.12.2024 in ***CWP No.5957 of 2024, titled Registrar, Maharishi Markandeshwar Medical College and Hospital (MMU) Vs. Padam Kumar***, passed by the learned Single Judge, affirming the award passed by the HP Industrial Tribunal-cum-Labour Court, Shimla, dated 20.01.2024.

2. In the case at hand, vide notification dated 22.06.2018, a Reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter for the purpose of brevity referred as "Act") qua the termination of service of the

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

present respondent by the appellant was received by the H.P. Industrial Tribunal-cum-Labour Court, Shimla. In terms of the reference, the validity of the termination and the consequential relief to be granted to either of the parties were to be considered.

3. In the claim petition, it had been averred that the respondent had been engaged as a Security Guard in the month of October 2012. He continued to perform the same till 21.03.2017 when his services are stated to have been illegally terminated. As per the respondent, he had proceeded on leave on 07.03.2017, on account of death of his mother. But when he returned to duty on 21.03.2017, he was not permitted to join and his services were terminated. It is in the aforesaid backdrop that violation of Section 25-F had been complained of.

4. Other than the aforesaid, on account of engagement of a new worker against the post which fell vacant on his illegal termination, violation of Section 25-H had been averred in the claim petition. Besides the aforesaid, violation of Section 25-G on account of juniors being retained post termination in the service of the respondent was also alleged in the claim petition.

5. In response thereto, the appellant contended that the petition was not maintainable, was bad for non-joinder of necessary parties and the appellant claimed to be not an "*industry*". On merits, it was contended that the services of the respondent had been engaged by a contractor and not by the appellant. Hence, according to the appellant, there was no employer-employee relationship inter se the parties. Other than the aforesaid, it was contended that the respondent had abandoned the job of his own free will and volition.

6. In the rejoinder filed, the respondent had controverted the averments made in the reply and reiterated those made in the claim. Based on the pleadings, following issues were framed:-

> 1. Whether the termination of the petitioner w.ef. 08.04.2017 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged? If so, what relief the petitioner is entitled to? OPP..
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> 2. Whether the claim is not maintainable as alleged, if so, its effects thereto? OPR….
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> 3. Whether the petitioner is not a workman under the provisions of Section 2(s) of the Industrial Disputes Act, 1947, as alleged, if so, its effect thereto? OPR….

4. Whether the petition is bad for non-joinder of necessary party as alleged, if so, its effect thereto? OPR....

5. Whether the claim is not maintainable as the respondents college does not fall under the provisions of industry as defined in the Act, as alleged, if so, its effect thereto? OPR....

6. Relief.

7. Post framing of issues, evidence on behalf of both the parties were led. The respondent had appeared as the sole witness, who deposed in favour of the claim petition and similarly one Shri Ajay Singhal, Registrar of the appellant had submitted his evidence by way of an affidavit on behalf of the appellant. The aforesaid witnesses were duly cross-examined.

8. Based on the pleadings and the evidence led, the Labour Court came to the conclusion that the respondent had worked continuously from October 2012 till 07.03.2017. The appellant had placed on record a photocopy of an appointment letter Exhibit RW1/C alleged to be issued by the Contractor dated 04.02.2016. The same was correctly ignored by the Labour Court as it was a photocopy. The original was never produced. Moreover, in the cross-examination of the respondent the stand of the respondent

that he was engaged in October 2012 remained un-shattered. Based on the aforesaid, the Labour Court had come to the conclusion that the petitioner had completed more than 240 days in 12 calendar months preceding his termination.

9. In order to establish that the respondent had been engaged by a contractor, suffice it to state that though an issue had been framed qua non-joinder of necessary party, onus of proving whereof lay on the appellant, neither efforts were made by the appellant to implead the alleged contractor who is stated to have engaged the services of the respondent as a party before the Labour Court, nor was the said contractor ever produced before the Labour Court as a witness to substantiate the contention made by the appellant.

10. Insofar as the alleged contractor, who is stated to have engaged the services of the respondent is concerned, no licence in terms of Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 was placed on record by the appellant to show that the said contractor had a licence issued by the competent authority to deploy contract labour. Moreover, no evidence was led to show that the work of the

respondent was being supervised by the alleged contractor who is stated to have engaged the services of the respondent.

11. Documentary evidence in the form of appointment letter (Exhibit RW1/C) alleged to have been issued by the Contractor, identity card alleged to have been issued by the Contractor (Exhibit RW1/B), copy of resume (Exhibit RW1/G), copy of salary statement (Exhibit RW1/H), copy of salary statement for the month of January (Exhibit RW1/K), and copy of salary statement of November 2016 marked as Exhibit RX-2 have been placed on record, however, the same have been correctly not taken into account by the Labour Court as these were mere photocopies nor admissible in evidence and their originals have not been produced.

12. Other than the aforesaid, no material had been placed on record to show that the salary was disbursed through the alleged contractor. In view of the aforesaid, the Labour Court correctly came to the conclusion that the services of the respondent, as was being claimed in the claim petition, had been engaged by the appellant and not by the contractor.

13. As has already been stated supra, since the

respondent had completed more than 240 days in 12 calendar months preceding his termination, therefore compliance of Section 25-F of the Industrial Disputes Act was an absolute imperative must. In the absence whereof, termination is illegal and bad in the eyes of law.

14. Further it has been contended on behalf of the appellant that post 07.03.2017 respondent had not reported for work and hence, according to them had abandoned the job. Therefore, there is no requirement to comply with the provisions of the Industrial Disputes Act. Non reporting for duty is a serious misconduct. No disciplinary proceedings were initiated against the respondent nor was a notice ever issued by the appellant on account of the respondent not reporting on duty ever since 07.03.2017.

15. The Labour Court had correctly observed that abandonment cannot be presumed and before removal compliance of natural justice was an absolute imperative must. Other than the aforesaid, since in the place of the respondent, some other employee had been engaged, therefore compliance of Section 25-H was required to be done in the case. In the absence of the same, the Labour Court had correctly observed infraction of Section 25-H of the

act.

16. Based on the law, the Labour Court had correctly held the respondent to be a "*workman*" and the appellant to be an "*industry*".

17. The aforesaid findings returned have not been interfered with by the learned Single Judge while exercising jurisdiction under Article 226 of the Constitution of India. No infirmity has been pointed out by the counsel for the appellant on account of which interference in the concurrent findings returned by the Court below would call for interference.

18. Thus, we are of the considered view that the learned Single Judge has not erred in any manner in allowing the writ petition and we do not find any plausible reason to take a different view. Resultantly, the Letters Patent Appeal being devoid of any merit is dismissed. Pending applications, if any, also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

26th May, 2026
(vs/Gaurav Rawat)