Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. 20/2021

Under Section 2A(2) of The Industrial Disputes Act, 1947

Shri Kunal Lodh

Petitioner

Vs.

M/s. The Himalaya Wellness Company

(formerly The Himalaya Drug Company)

Opposite Party

Date: 03.10.2024

J U D G E M E N T

The case of the petitioner, in short, is that he was appointed as the Medical Representative for the Hospital Strategic Business Unit of the OP company on and from 18.04.2012 and for his good performance, he was confirmed in service but suddenly on 12.01.2021 the OP company sent one letter to him stating therein that the OP company had been restructuring Zeus Strategic Business Unit as part of the business and it had become necessary for the company to temporarily reduce the

workforce and for this reason the service of the petitioner was no longer required and thereafter the service of the petitioner was terminated w.e.f. closing hours of 30.01.2021.

The petitioner further submitted in his written statement that there was no justification to throw the petitioner out of employment in the name of restructuring and the OP company could have transferred him to any other business unit temporarily till completion of the process of restructuring but the Op company has simply retrenched the workman illegally from service and the OP company published advertisement for filling up vacancies but the company did not ask the petitioner to join in any such vacant post and the OP company did not pay any notice or compensation for such retrenchment and the said Zeus Strategic Business Unit has not been legally closed and after 30.01.2021 the petitioner never worked in any place for his earning and the petitioner challenged the said illegal retrenchment before the Labour Commissioner but no settlement was made within the statutory period and thereafter the petitioner has been compelled to file this case before this Tribunal and he has prayed for reinstatement of his service and setting aside the order of illegal retrenchment and payment of full back wages with consequential reliefs.

The OP company has contested this case by filing a written statement denying therein all the material allegations in the written statement of the petitioner.

The OP company submits that the petitioner was appointed as a medical representative under the OP company and due to COVID-19 this business unit was completely financially devastated from March 2020 and the OP company suffered huge loss for which the company was compelled to shut down several business units and reduced the workforce and the OP company paid compensation to the petitioner due to said termination and provided assistance to the terminated employees to find a

suitable job opportunity under the placement agency and several terminated employees opted for options and were placed in different companies but this petitioner did not make any option and he applied for settlement of dues and accordingly the OP company paid the entire amount with two months additional pay with one month notice to the petitioner with full satisfaction and all the allegations of the petitioner in this case are false. Hence, the OP company has prayed for dismissal of this case.

Considering the entire materials on record the following issues have been framed in this case in order to arrive at a conclusion: -

i. *Is the case maintainable in its present form and law?*
ii. *Has the petitioner any cause of action to file this case?*
iii. *Is the petitioner entitled to get relief as prayed for?*
iv. *To other relief or reliefs, if any, is the petitioner entitled.*

Decision with reasons:

In order to prove the case the petitioner has examined himself as the PW1 and proved some documents while the OP company has examined one witness and proved some documents.

Admittedly the petitioner was appointed as the medical representative on 18.04.2012 in Hospital Strategic Business Unit of the OP company and he was the permanent staff under the OP company.

Admittedly the service of the petitioner has been terminated w.e.f. the closing hours of 30.01.2021 according to the service closure letter (Exhibit-02 series).

The said service closure letter issued by the OP company to the petitioner mentions that the petitioner was a dedicated and contributing employee as the medical representative. So it is clear that the petitioner had no defect or latches in his performance till his termination by the OP company.

The service closure letter mentions that for the purpose of restructuring of Hospital Strategic Business Unit of the OP company was compelled to **temporarily** reduce the workforce for development of the OP company. So it means that the petitioner was not permanently or conclusively terminated from his service. On the other hand, he was **temporarily** terminated from his service for the principle of restructuring followed by the OP company.

There is nothing on record to show that after temporary termination of service of the petitioner w.e.f. 30.01.2021, the OP company provided him any permanent or temporary job in Hospital Strategic Business Unit or any other units under the OP company. So it is clear that though the service closure letter mentions about temporary termination of the petitioner form his service, actually he has been terminated forever by the OP company for the said principle of restructuring though admittedly the petitioner had no fault in his performance under the OP company.

Admittedly the petitioner was not terminated by way of disciplinary action taken by the OP company. On the contrary, for the principle of restructuring, he was terminated from his service though he was a dedicated employee till the date of his termination. So such type of termination comes under the purview of retrenchment according to Section 2 Clause (ooo) of The Industrial Disputes Act, 1947.

According to Section 25- F of The Industrial Disputes Act, 1947, there are some conditions which are precedent to the retrenchment of workman and admittedly the petitioner was in continuous service for more than one year under the OP company.

According to the service closure letter (Exhibit- 02 series), the OP company issued this letter dated 12.01.2021 to the petitioner informing him about termination of his service from 30.01.2021. So it is clear that according to Section 25- F (a) of The Industrial Disputes Act, 1947, one month's notice for retrenchment has not been given by the OP company to the petitioner and the period of notice has not expired and the final settlement calculation cum pre-receipt does not mention that compensation was paid to the petitioner at the time of retrenchment according to Section 25- F (b) of The Industrial Disputes Act, 1947, and the OP company has not produced any document to show that according to Section 25- F (c) of The Industrial Disputes Act, 1947, the OP company served notice to the appropriate Government in prescribed manner regarding such retrenchment.

So it is clear that the OP company did not comply with the conditions precedent to retrenchment of workman according to Section 25- F of The Industrial Disputes Act, 1947. Hence, I hold that the petitioner was not retrenched according to Section 25- F of The Industrial Disputes Act, 1947.

The Ld. Advocate for the petitioner has submitted the following decisions of the Hon'ble Supreme Court for consideration in this case :-

i) *The Hon'ble Supreme Court has held in a case namely Narottam Chopra Vs. Presiding Officer as reported in 1988(36) BLJR page 636 that if the services of an employee are terminated in violation of Section 25-F of The Industrial Disputes Act, 1947, the order of*

termination is rendered ab initio void and the employee is entitled to continuity of service alongwith his back wages.

ii) *The Hon'ble Supreme Court has held in a case namely Promod Jha and Ors. Vs. State of Bihar and Ors. as reported in Indian Kanoon in case no. – Appeal(Civil 4157) of 2000 that payment of tender of compensation after the time when the retrenchment has taken affect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment and compliance of clauses (a) & (b) of Section 25 strictly as per the requirement of the provision is mandatory and compliance with Clause (c) is directory.*

iii) *The Hon'ble Supreme Court has held in a case namely Anoop Sharma Vs. Executive Engineer, Public Health, Division No. 01, Panipath (Haryana) as reported in (2010)2 Supreme Court cases(L & S) page 63 that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) & (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.*

iv) *The Hon'ble Supreme Court has held in a case namely Raj Kumar Vs. Dir. of Education and Ors. In Civil Appeal No. 1020 of 2011 reported in Indian Kanoon that the retrenchment of the appellant from his service is bad in law and the company is directed to reinstate the appellant at his post alongwith back wages and consequential benefits from the date of termination of service.*

The Ld. Lawyer for the OP company has cited the following decisions of the Hon'ble Supreme Court:-

i) *The Hon'ble Supreme Court has held in a case namely Workmen of the Indian Leaf Tobacco Development Co. Ltd. Guntur V. The Management of Indian Leaf Tobacco Development Co. Ltd. Guntur as reported in AIR 1970 Supreme Court 860, that where the closure of some depots by a company is genuine and real and not only a device adopted for carrying on the same business in a different manner, the workmen who are retrenched due to such closure are entitled to retrenchment compensation only and cannot claim any re-employment or reinstatement.*

ii) *The Hon'ble Supreme Court has held in a case namely Management of Hindustan Steel ltd. V. The workmen and Others as reported in AIR supreme Court 878 that closure of a distinct venture though a part of business complex incurs retrenchment compensation none the less than closure of the entire works and a general plea that grounds of retrenchment were false is not specific and precise enough to enable the employer to meet it.*

So in view of the above decisions of the Hon'ble Supreme Court regarding non-compliance of Section 25-F of The Industrial Disputes Act, 1947 and in view of the materials on record of this case, I hold that the OP company has not complied with Section 25-F of The Industrial Disputes Act, 1947 at the time of retrenchment of the petitioner and the petitioner admittedly was a permanent staff under the OP company and he worked for more than one year and accordingly it is to be considered now as to whether he can be reinstated in his previous service with full back wages and other consequential benefits.

There is no cogent evidence on record to show that after termination of his service the petitioner has been working elsewhere for his gain.

In its written statement the OP company has taken a plea that due to COVID the OP company suffered financially too much from the month of March 2020 for which the OP company decided to restructure the business policy of the Hospital Strategic Business Unit and decided to shut down several business units and reduced the workforce and accordingly closed the Hospital Strategic Business Unit and other several divisions of the OP company, **but the OP company has not produced any document in this case to show that during the said COVID period the OP company had suffered from acute financial problem for which the company was compelled to shut down the said divisions**.

The OPW1, Syed Md. Farooq, who is attached to Zandra SBU of the OP company as the Regional Manager, has stated in his cross-examination that the petitioner received full and final payment from the OP company after termination and after termination of service of the petitioner the OP company appointed some other persons in different divisions of the OP company and the OP company did not give any offer to the petitioner to join in those divisions of the OP company after his termination and when the when the OP company gave appointment to other persons in other divisions, the OP company did not inform the petitioner about vacancy of the said other divisions of the OP company.

The service closure letter dated 12.01.2021 sent by the OP company to the petitioner as Exhibit – 02 series clearly mentions that the workforce was reduced temporarily for which the service of the petitioner was terminated and this expression “temporary reduction” sufficiently means that the petitioner was temporarily terminated from his service by the OP company though he was a permanent staff and the OP company admittedly as the dedicated and contributing employee. So it is peculiar to see that the petitioner was temporarily terminated from his service without any fault on his behalf.

Admittedly after termination of his service on 30.01.2021, the OP company did not employ the petitioner again as the Medical Representative in any of its existing divisions or Hospital Strategic Business Unit though in the service closure letter the OP company has mentioned that it will make arrangement for placement opportunities with potential employers.

In Case No. 18/2021 between Mukesh Patra and this OP company, the petitioner in that case has proved four appointment letters as Exhibit- 06 series for four persons who were appointed by the OP company on 03.03.2022, 19.04.2022, 09.02.2022 & 11.02.2022 in Zenith Strategic Business Unit, Zenith Strategic Business Unit, Zeal Pure Herbs Strategic Business Unit & Zandra Strategic Business Unit of the OP company as the Trainee Medical Representative. So it is clear that after termination of service of the petitioner on 30.01.2021, the OP company appointed four persons in its other divisions.

So the Exhibit- 06 series prove that though on 30.01.2021 the petitioner was terminated from his service temporarily without any fault, he was not re-appointed or re-employed by the OP company later on but the OP company appointed four persons in its different divisions in the same category of medical representative and there is no justified explanation from the side of the OP company as to why the petitioner was not re-employed though he was temporarily terminated from his service on 30.01.2021.

The OP company has not produced any document to show that according to the Rules of the Company Law, the said Hospital Strategic Business Unit was closed due to acute financial problem during the COVID period in 2020. Accordingly I hold that the said unit is still in existence.

So the decision of the Hon'ble Supreme Court (AIR 1970 SC 860) cited by the OP company regarding closure of the unit of the company is not applicable in this case because the OP company has failed to prove legally that the said Hospital Strategic Business Unit was closed in 2020 due to acute financial problem in 2020.

In view of the abovementioned decisions of the Hon'ble Supreme Court, the materials on record of this case and the abovementioned discussion on the basis of the materials on record, I hold that without any justified cause and without any fault of the petitioner, the OP company terminated his service in the name of reduction of workforce and **cleverly** the OP company has mentioned in the service closure letter that the petitioner was temporarily terminated from his service though the OP company terminated his service permanently and completely because the OP company appointed four persons in its other divisions after termination of service of the petitioner but the OP company did not re-appoint the petitioner as the Medical Representative in any of its divisions and the said conduct of the OP company proves that it cheated the petitioner by mentioning temporary termination in the service closure letter and promise for other service after termination of service of the petitioner.

According to Section 25-T of The Industrial Disputes Act, 1947, "*no employer or workman or a Trade Union shall commit any unfair labour practice and if done, he will be punishable with imprisonment for a term which may extent to 06(six) months or with fine which may extend to Rs. 1000/- or with both.*"

The above conduct of the OP company sufficiently proves that by way of victimisation and not in good faith but in the colourable exercise of the employer's rights according to the *Fifth Schedule under The Industrial Disputes Act, 1947,* the OP company has

committed unfair labour practice to terminate the petitioner of this case.

As the OP company has committed unfair labour practice to terminate the petitioner of this case, the OP company has to pay Rs. 300000/- as cost and compensation to the petitioner.

The Industrial Disputes Act, 1947 was brought on the Statute Book with the object to ensure **social justice** to both the employer and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties and on the **Principle of Beneficial Legislation**, this Act has been created but in this case the OP company wilfully, whimsically and illegally has terminated the service of the petitioner without any lawful excuse.

In view of the above discussions made on the materials on record I hold that the petitioner, a permanent staff under the OP company, has to be reinstated in his previous post and as there is no proof to show that after termination of his service he used to work elsewhere for money, I hold that he is entitled to get full back wages alongwith consequential benefits.

Hence it is,

O R D E R E D

That the case no. 20/2021 under Section 2A(2) of The Industrial Disputes Act, 1947 is allowed on contest against the OP company with a cost of Rs. 3,00,000/- to be paid to the petitioner within 30 days from this date of order.

It is hereby declared that the order of termination dated 30.01.2021 passed by the OP company against the petitioner is illegal, invalid, baseless and unjustified.

The OP company is directed to reinstate the petitioner as permanent Medical Representative in the Hospital Strategic Business Unit or any other divisions under the OP company **immediately** by serving one notice in this respect to the petitioner.

The OP company is directed to pay the full back wages alongwith consequential reliefs from 31.01.2021 till the date of payment with a compound interest of 10% per annum on the entire arrear amount of back wages and consequential reliefs to the petitioner within 30 days from this date of order.

Let this judgement and order be treated as an Award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.

Judge

(Shri P.S. Mukhopadhyay)
Judge
2nd Industrial Tribunal
Kolkata

13.

I/582933/2024

Government of West Bengal
Labour Department, I. R. Branch
N. S. Building, 12th Floor, 1, K.S. Roy Road, Kolkata – 700001

No. Labr./ 1183 /(LC-IR)/22015(16)/7/2022 Date : 06/12/24

ORDER

WHEREAS an industrial dispute existed between M/s. The Himalaya Wellness Company (formerly The Himalaya Drug Company) and their workman Shri Kunal Lodh regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS Shri Kunal Lodh has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Second Industrial Tribunal specified for this purpose under this Department Notification No. 101- IR dated 2.2.12;

AND WHEREAS the said Second Industrial Tribunal has submitted to the State Government its Award dated 03.10.2024 in Case No. 20/2021 on the said Dispute vide E-mail dated 03.10.2024.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE
(Attached herewith)

By order of the Governor,

Assistant Secretary
to the Government of West Bengal

No. Labr/ 1183 /1(5)/(LC-IR)/22015(16)/7/2022 Date : 06/12/24

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/s. The Himalaya Wellness Company (formerly The Himalaya Drug Company)
2. Shri Kunal Lodh.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Assistant Secretary

No. Labr/ 1183 /2(3)/(LC-IR)/ 22015(16)/ 7/2022 Date : 06/12/24

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, N. S. Building, 3rd Floor, 1, K. S. Roy Road, Kolkata - 700001 with reference to his E-mail dated 03.10.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary