

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

No. Labr/ 1162 /(LC-IR)/ 22015(16)/7/2022

Date : 04-12-2024

ORDER

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

AND WHEREAS the parties have filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Second Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 21.07.1997 ;

AND WHEREAS the said Second Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 30.10.2024 in case No. 28/2021 under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide e-mail dated 12.11.2024 ;

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute 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/ 1162 /1(5)/(LC-IR)/ 22015(16)/7/2022

Date : 04-12-2024

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

6. M/s. The Himalaya Wellness Company (formerly The Himalaya Drug Company).
7. Sri Sanjoy Saha.
8. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
9. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
10. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/ 1162 /1(3)/(LC-IR)/ 22015(16)/7/2022

Date : 04-12-2024

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 12.11.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.



Assistant Secretary

Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. 28/2021

Under Section 10(1)(d) of The Industrial Disputes Act, 1947

Sanjoy Saha

Petitioner

Vs.

**M/s. The Himalaya Wellness Company
(formerly The Himalaya Drug Company)**

Opposite Party

Date: 30.10.2024

J U D G E M E N T

The case of the petitioner, in short, is that he was appointed as the Trainee Medical Representative for “Zandra Strategic Business Unit” of the OP company w.e.f. 02.04.2010 in the Headquarter at Kolkata and his service was confirmed w.e.f. 01.01.2011 and he had been working as such for more than 10 years as the Medical

Representative without any disturbance and he was the member of Federation of Medical & Sales Representative's Associations of India (FMRAI) and its state unit namely West Bengal Medical and Sales Representative's Union (WBMSRU) and he had to participate in different agitational programme of the Trade Union in protest of the OP company's actions of unfair labour practice and illegal retrenchment of the sales promotion employees of the OP company.

The petitioner further submitted in his written statement that the OP company has issued one transfer order dated 09.04.2021 for the petitioner for his transfer from Kolkata to Bengaluru by mentioning in that letter “ ***As you are aware of the recent incident of physical assault to our manager by union members on 29.03.2021 in your territory, we as an organisation are very much concerned and worried about your safety and being a valued employee of the company we cannot leave you to work in such an unsafe working condition in your territory where there are reports of obstruction of work and physical assault and keeping your safety in mind and in exigencies of work your services are transferred from your present headquarter of Kolkata to Bengaluru headquarter with immediate effect***”, but no such incident of physical assault took place on any of the managers of the OP company on 29.03.2021 in the territory of the petitioner and on that date he had joined field work with one Sk. Shanu, Regional Manager, Zandra, Kolkata but he (petitioner) was not an eye witness to any such incident on that date and by one email said Sk. Shanu asked him to stop the field work for that day as he (Sk. Shanu) was assaulted in front of him during joint field work and the story of physical assault of the manager has been made by the OP company with a *malafide* intention and after getting the order of transfer, the petitioner repeatedly requested the OP company not to transfer him to Bengaluru but the OP company did not pay any heed to that request and the company lodged an FIR at the Rajabagan Police Station Kolkata and asked the petitioner to make statement as an eye witness of the alleged incident and after receiving the notice of the police, the petitioner requested the police officer to give him time for attending the Police Station and then on 26.05.2021 the petitioner made complaint through the union to the Joint Labour Commissioner against the said illegal transfer

and the company did not pay him from the month of May 2021 and then on 29.06.2021 the petitioner received the letter of retrenchment from the service from the OP company with the allegation that the workman has abandoned his service and after his termination the petitioner did not work anywhere for his gainful interest and the OP company has illegally terminated his service on false grounds 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 on 02.04.2010 the OP company appointed the petitioner as a Trainee Medical Representative for Zandra Strategic Business Unit and thereafter he was promoted as the Pharma Sales Officer and then on 29.03.2021 in the territory of the petitioner one incident took place and considering the safety of the petitioner and business exigency the OP company transferred the petitioner from Kolkata to Bengaluru by letter dated 09.04.2021 and then by several reminders the OP company asked him to join his service in Bengaluru but he did not join there and after waiting for 75 days, the OP company dismissed his service and transfer is a regular norm followed by the OP company and on 29.03.2021 some union members of the FMRAI physically assaulted Sk. Shanu, Regional Manager during the working hour and then Sk. Shanu lodged one FIR at the Police Station and the petitioner did not attend the Police Station to make his statement regarding the said incident in spite of request by said Sk. Shanu though the said incident took place in presence of the petitioner and for the security and safety of the petitioner, the OP company transferred him from Kolkata to Bengaluru 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:

At first, I would like to mention that due to inadvertence and oversight, the Exhibited documents of the OP company have been marked as Exhibit- 01 series, 02 & 03 series but actually it should have been exhibited as Exhibit – A series, B & C series.

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 Trainee Medical Representative on 02.04.2010 in the Zandra Strategic Business Unit of the OP company and he was the permanent staff under the OP company and promoted as the Pharma Sales Officer of the OP company.

The petitioner of this case as the PW1 has mentioned his case in his affidavit-in-chief and **in his cross-examination** he has stated that on 29.03.2021 no incident took place involving Sk. Shanu and he (PW1) was not present at that time and regarding the said incident of 29.03.2021, one FIR was lodged and his (PW1) name has been mentioned as witness in that case but he did not sign on the said FIR as witness and he knew nothing about the said incident dated 29.03.2021 and the said FIR was lodged by Sk. Shanu and police called him (PW1) by one summons and he went to the police station and police asked him about the incident and he told the police that no such incident dated 29.03.2021 took place in his presence and after the said incident of 29.03.2021 the OP company told him that there may be problem for him to work in the field at that time and the

OP company asked him to join in the head office considering his safety and security but he did not join the said head office and his service was not transferrable and during tenure of his period he himself participated in the agitation programme against the OP company and for his safety and security the OP company issued the said transfer order and on 22.04.2021 by sending one email the OP company informed him that this service will be terminated if he had not joined on 25.04.2021 but he did not join and then on 29.06.2021 his service was terminated and after termination of his service the OP company did not pay his entire dues and the OP company did not send him any money as per final settlement dues and for the last time in April 2021, he received salary in his salary account and he submitted one letter to show that after getting the transfer order in 2021 he issued one letter to the Human Resource Department of the OP company to consider his request for transfer and the said department gave him one reply to the point that in the area of the petitioner the incident of assault had taken place and the said place was not safe and secured and for this reason he was transferred and the OP company gave him 08 emails requesting him to go on transfer and on 01.06.2021 the OP company gave him one email to the point that if he would not go on transfer, then it would be presumed that he did not intend to work in the company and then he sent one email to the OP company stating that he did not want to go to that place of transfer and he wanted to work in his present place and he (PW1) knows that as the particulars of the FIR named accused persons could not be gathered, the police officer submitted FRT in that criminal case.

So the above cross-examinations of the PW1 prove that for safety and security of the PW1 after the incident of assault on the Regional Manager on 29.03.2021, the OP company issued transfer order to the PW1 from Kolkata headquarter to the headquarter of Bengaluru and the petitioner did not join there for which the OP company terminated his service.

From the cross-examinations of the PW1 it is not proved **legally** that when the alleged incident of assault took place on 29.03.2021 on the Regional Manager in the field work, the petitioner was also present with that manager at that time at that place.

The OPW1 Syed Md. Farooq, the Regional Manager of the Zandra Division of the Op company, has stated about the case of the OP company in his affidavit-in-chief and **in his cross-examination** he has stated that he was not present when the alleged incident took place and before transferring the petitioner to Bengaluru, the OP company made one **internal enquiry** regarding the safety of the petitioner in Bengaluru and as there was vacancy in Bengaluru, the OP company transferred the petitioner to that place and he (OPW1) has not filed any document regarding the said internal enquiry held by the OP company before transfer of the petitioner to Bengaluru and each and every workman of the OP company has not been transferred according to the regular norm followed by the OP company and the letter dated 29.03.2021 submitted by Sk. Shanu to the petitioner (Exhibit – 02 series) does not mention who attacked or assaulted said Sk. Shanu and the letter dated 06.04.2021 sent by Enam Ali to the petitioner (Exhibit – 02 series) does not mention that FMRAI assaulted Sk. Shanu and **Sk. Shanu, the victim of the said incident, has not been transferred to any place by the OP company** and he (OPW1) cannot remember whether before issuing the termination letter to the petitioner the OP company issued any notice to the petitioner regarding such termination and the OP company officially terminated the petitioner from the office and the letter dated 29.06.2021 (Exhibit-02series) does not mention specifically about termination of service of the petitioner and it only mentions voluntary abandonment of service by the petitioner and in the *penultimate para* of the letter dated 29.06.2021 it is mentioned that as the petitioner voluntarily abandoned his employment, he was relieved from the service of the OP company with immediate effect and **he (OPW1) cannot remember whether the petitioner was paid one month's salary and compensation after his release** and he (OPW1) does not know whether the OP company informed the Government Authority at that time regarding release of the petitioner from service by the letter dated 29.06.2021 and **the petitioner was released from his service for his voluntary abandonment.**

In his cross-examination the OPW1 has further stated that according to the final settlement calculation sheet made by the OP company the petitioner was released from service as he **resigned** from service and he (OPW1) cannot say whether the petitioner submitted any

resignation letter before the OP company and he (OPW1) cannot remember whether the OP company gave any statutory payment to the petitioner due to his release from service.

The OPW1 has deposed in this case on many material points by saying *“I cannot remember or I do not know or I cannot say”* in his cross-examination but such type of evidences of the OPW1 have no cogent value to favour the case of the OP company.

Admittedly the petitioner, being a permanent and promoted staff, was not terminated by way of disciplinary action taken by the OP company. On the contrary, for the alleged safety and security of the petitioner, he was terminated from his service though he was a valued 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.

But 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 legally according to Section 25- F of The Industrial Disputes Act, 1947.

According to the written statement of the OP company the petitioner voluntarily abandoned his service by not joining in Bengaluru office of the OP company and the letter dated 29.06.2021 issued by the OP company to the petitioner (Exhibit- 02 series) specifically mentions about said voluntary abandonment of said service by the petitioner but the final settlement calculation cum pre-receipt (Exhibit – 03 series) proved by the OP company mentions that **resignation** is the ground of termination of service of the petitioner from the OP company.

So the OP company itself does not know actually what was the reason for which the petitioner was dismissed from his service --- whether it was for voluntary abandonment of service by the petitioner or resignation by the petitioner, and such type of vital contradictory and confusing circumstances as per the case of the OP company conclusively proves the extreme *malafide intention, ill motive and biasness* of the OP company to remove the petitioner from his service.

Admittedly said Sk. Shanu, the Regional Manager of the OP company and the alleged victim of the incident of assault which took place on 29.03.2021, has not been transferred by the OP company to any place from the Kolkata headquarter of the OP company for his safety and security though allegedly he was assaulted by the miscreants during field work with the petitioner on 29.03.2021, and as the petitioner has denied his presence with Sk. Shanu on 29.03.2021 at the time of the incident of assault at the place of assault, it was the **mandatory duty** of the OP company to examine said Sk. Shanu in this case to prove that alongwith him the petitioner was present on 29.03.2021 at the time of the incident of assault at the place of assault but the OP company has not done so and actually the OP company has not produced any cogent and supporting evidence on record to prove that on 29.03.2021 at the time of the incident of assault at the place of assault the petitioner and Sk. Shanu were working together and accordingly, I hold that the OP company has failed to prove that on 29.03.2021 at the time of the incident of assault at the place of assault the petitioner and Sk. Shanu were working together.

There is no cogent evidence on record to show that at the time of termination of service of the petitioner the OP company paid him salary of one month and compensation according to Section 25-F of The Industrial Disputes Act, 1947.

Section 25-F of The Industrial Disputes Act, 1947 is a mandatory provision to be followed by the employer if the employer decides to terminate the service of a permanent staff without starting any disciplinary action against the said staff before his termination, but

surprisingly the OP company in this case has violated the mandatory provisions of Section 25-F of The Industrial Disputes Act, 1947 as discussed above and deliberate violation of Section 25-F of The Industrial Disputes Act, 1947 at the time of termination of service of the petitioner by the OP company clearly proves that in the colourable exercise of the right of the employer, the OP company has whimsically and illegally terminated the service of the petitioner, causing serious injustice and harassment to the petitioner to a large extent specially in the matter of acute financial problem and for such type of illegal conduct of the OP company, the OP company is directed to pay Rs. 100000/- as compensation to the petitioner for violating the mandatory provisions of Section 25-F of The Industrial Disputes Act, 1947.

The petitioner has proved a series of letters (Exhibit 02 series) issued by the petitioner to the OP company to consider his transfer to Bengaluru from Kolkata and the OP company responded to those letters before 29.06.2021 and though on 29.06.2021 the OP company dismissed service of the petitioner, by a letter dated 30.06.2021 (Exhibit 02 series) the OP company asked the petitioner to complete all pending TP, DCR and Expense statements on or before 10.07.2021 since the temporary user ID will be closed permanently thereafter.

So it is clear that **till 10.07.2021** the OP company gave time to the petitioner to complete his pending works in the ETHOS Active Master though he was removed from service on 29.06.2021. So the petitioner was directed to do the abovementioned pending works relating to the OP company.

Now the question is whether the abovementioned letters issued by the petitioner to the OP company and responses given by the OP company to the petitioner before dismissal of service of the petitioner before 29.06.2021 and the abovementioned letter dated 30.06.2021 issued by the OP company to the petitioner to complete his pending works till 10.07.2021 can be termed as "*voluntary abandonment of service by the petitioner*"--- the answer is --- **certainly not** because had the petitioner really abandoned his service **before 29.06.2021**,

he would not have certainly requested the OP company repeatedly before 29.06.2021 to consider his place of transfer.

There is no legal proof that the petitioner himself resigned from his service by issuing any letter.

So it is crystal clear that **the petitioner neither resigned nor voluntarily abandoned his service.**

In this case the OP company asked the petitioner to join in the headquarter of Bengaluru from the headquarter of Kolkata of the OP company and Bengaluru is at about **1800 km** away from Kolkata and it is a too much long distance from Kolkata and without any justified reason the said transfer order was passed to such a long distance, showing injustice and violation of the *Principles of Natural Justice* to the petitioner without any valid reason.

It is very much ridiculous to see that Sk. Shanu, who was allegedly assaulted by some miscreants in the field work on 29.03.2021, the OP company did not consider his safety and security and the company did not transfer him from Kolkata headquarter but the petitioner who was not with Sk. Shanu on 29.03.2021 at the time of the incident at the place of assault and who was not assaulted by the said miscreants, the OP company thought about security and safety of the petitioner and transferred him to a long distance at Bengaluru and this circumstance is nothing but **an example of crocodile tears.**

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.*

Perused the abovementioned decisions for consideration in this case.

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 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 safety and security 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 extend to 06(six) months or with fine which may extend to Rs. 1000/- or with both.*" According to Section 25-U of The Industrial Disputes Act, 1947.

The above conduct of the OP company sufficiently proves that in the colourable exercise of the employer's rights, the OP company has victimised the petitioner whimsically and illegally without any legal grounds and under the guise of the management policy, the OP company transferred the petitioner to the headquarter of Bengaluru from the headquarter of Kolkata, which is 1800 KM away from Kolkata, with malafide intention and as such I hold that 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.

Section 25-U of The Industrial Disputes Act, 1947 is criminal in nature because it mentions about imprisonment and fine but in this case no criminal procedure is followed against the OP company for committing unfair labour practice upon the petitioner. Instead, the

OP company is directed to pay compensation to the petitioner for exercising unfair labour practice upon the petitioner.

As the OP company has committed unfair labour practice to terminate the petitioner of this case, the OP company is directed to pay Rs. 300000/- as 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 gain, I hold that he is entitled to get full back wages alongwith consequential benefits.

Hence it is,

ORDERED

That the case no. 28/2021 under Section 10 (1) (d) of The Industrial Disputes Act, 1947 is allowed on contest against the OP company with a compensation of Rs. 3,00,000/- and Rs. 100000/- total Rs. 400000/-(Rs. Four Lakhs) to be paid to the petitioner within 30 days from this date of order.

It is hereby declared that the order of termination or release dated 29.06.2021 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 Pharma Sales Officer in the Zandra Strategic Business Unit under the OP company **immediately** and the petitioner is directed to join immediately in that division of the OP company in the headquarter of Kolkata at Howrah.

The OP company is directed to pay the full back wages alongwith consequential reliefs from May 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