Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. 06/2023

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

Shri Suprakash Pal

Petitioner

Vs.

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

Opposite Party

Date: 20.12.2024

J U D G E M E N T

The case of the petitioner, in short, is that he was appointed as the Sales Promotion Employee in the OP company w.e.f.

23.04.2010 and his service was confirmed and promoted as Pharma Sales Officer for Zandra Strategic Business Unit of the OP company and his duty was to visit the doctors, chemists & stockists for promoting the products of the OP company and he was a member under FMRAI and through the Welfare Committee of the OP company many disputes between the employer and the employees were amicable settled and since the last 2/3 years the OP company started to eradicate the FMRAI and proceeded to act as per their plan keeping the Welfare Committee a defunct body and he, being one of the members of the FMRAI, gave protest to the illegal activities of the OP company and then on 19.03.2021 the OP company submitted one chargesheet against the petitioner on the ground of wilful insubordination or disobedience of the order of superior, not submitting the daily report form, expense statement and other reports in time, habitual failure to comply with provisions of the company's service rules, neglect of work or habitual negligence, any act prejudicial to the interest of the company, any other acts subversive of discipline and any act subversive of discipline/good behaviour and all these allegations are baseless and unspecific and the petitioner replied to the said chargesheet dated 19.03.2021 on 25.03.2021 and then one domestic enquiry was started against the petitioner in Bengaluru and the petitioner attended the said enquiry in Bengaluru and submitted his written statement and then by a dismissal order dated 31.10.2022 the OP company dismissed the service of the petitioner and the petitioner prayed for revocation of the said dismissal order but did not get any reply and then the petitioner

submitted complaint before the Labour Commissioner and prayed for settlement of the dispute and the OP company submitted representation to the Labour Commissioner and then getting no result for conciliation proceedings the petitioner filed this case before this Tribunal and after his dismissal the petitioner has been suffering from acute financial problem 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.

Record shows that as after receiving the notice from this Tribunal the OP company did not appear in this case, the case was fixed for exparte hearing and then the OP company appeared and filed a verified petition praying for vacating the said exparte order and after hearing both sides the said prayer was allowed and the OP company was directed to file the written statement and thereafter many opportunities were given to the OP company to file the written statement but the OP company did not file it and then on 17.10.2023 the OP company filed a petition praying for dismissal of this case on the ground of lack of jurisdiction of this Tribunal and after hearing both sides the said petition of the OP company was disposed of and thereafter the OP company filed list of documents but did not file the written statement and did not pray for filing written statement and then issues were framed and examination of the witnesses was started.

So it is clear that the OP company has not filed written statement in spite of getting many opportunities but has contested this case by examining witness and proving documents.

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 what other relief or reliefs, if any, is the petitioner entitled.*

Decision with reasons:

Issues No. 1 to 4

All the issues are taken up together for consideration for the sake of convenience.

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 Sales Promotion Employee on 23.04.2010 in the OP company and he was the

permanent worker under the OP company as the Sales Promotion Employee of the OP company.

Regarding jurisdiction of this Tribunal to dispose of this case – record shows that earlier according to the prayer of the OP company contested hearing was made regarding jurisdiction of this Tribunal to try this case and after hearing both sides on 31.01.2024 this Tribunal held that this Tribunal has jurisdiction to dispose of this case and then this order has not been challenged by the OP company before any higher forum. Accordingly at present the OP company is **estopped** from making any dispute in respect of jurisdiction of this Tribunal to try this case.

But again during argument of this case on merit the OP company has taken this plea regarding jurisdiction of this Tribunal. For this reason, again the matter of jurisdiction is discussed in this case.

Admittedly the petitioner used to reside in Salt Lake, Kolkata in his house and work in the Kolkata headquarter of the OP company as per his appointment letter and the said Kolkata headquarter has been shifted later on to Howrah and it is now known as Regional office of the OP company at Howrah and at the time of dismissal of service the petitioner used to work in Regional office of the OP company at Howrah and the domestic enquiry was conducted by the OP company in the head office of

the OP company at Bengaluru and the dismissal order was sent to the petitioner in his residence in Kolkata.

So the petitioner had legal right to file this case either in Bengaluru Court or in Court within the Regional Office of the OP company in Howrah and the petitioner has filed this case before this Tribunal which deals with cases under the Regional Office of the OP company in Howrah according to the Government notification.

At present in the Regional Office of the OP company in Howrah, the OP company carries on business.

Hence, according to Section 20(a) and 20(c) of the Code of Civil Procedure, 1908, I hold that this Tribunal has jurisdiction to try this case because the Regional Office of the OP company in Howrah carries its business in Howrah and dismissal order was sent to the petitioner in his house in Kolkata.

The Code of Civil Procedure, 1908 is a central statute and unless it is amended by the legislatures, no central or state government or private company or any person has any legal right to disobey the said provisions of the Code of Civil Procedure, 1908 and similarly the provisions of said Section 20 (a) & (c) of the Code of Civil Procedure, 1908 cannot be violated by any company by

making another provision for determination of jurisdiction for adjudication of disputes in its service rules.

Accordingly, I hold that this Tribunal has jurisdiction to try this case.

In this case the petitioner has prayed for an Award of reinstatement in his service by setting aside the order of illegal retrenchment made by the OP company and for payment of full back wages and consequential benefits and admittedly as the OP company by virtue of one domestic enquiry dismissed the petitioner from his service, the petitioner has filed this case praying for reinstatement and other relief **but the petitioner has not specifically prayed for declaration that the said domestic enquiry was illegal and invalid**.

The Ld. Lawyer for the OP company has submitted during argument that the petitioner did not challenge the said domestic enquiry as illegal in his prayer but prayed for setting aside the said order of illegal retrenchment and reinstatement of his service alongwith other relief.

It is true that the petitioner has not prayed for declaration that the said domestic enquiry held against the petitioner was illegal and invalid though he has prayed for setting aside the order of dismissal.

This non-mention of prayer by the petitioner for declaration that the said domestic enquiry held against him was illegal and invalid is not fatal to the case of the petitioner because if after considering the entire materials on record and the oral and documentary evidences on record, it is found that the petitioner is entitled to get an order of reinstatement by setting aside the order of illegal retrenchment passed by the OP company, then by virtue of judicial discretion and inherent power according to Section 151 of the Code of Civil Procedure, 1908, the Tribunal can pass order stating that the said domestic enquiry was illegal and invalid.

The PW1, Suprakash Pal, the petitioner of this case, has filed his evidence in chief by one affidavit and he has mentioned his case as per his written statement and he has proved some documents and in his cross-examination he has stated that in 2010 he has joined his service in the OP company and he used to visit 10 doctors and 05 chemists daily as per order of his immediate boss.

The OPW 1, Syed Md. Farooq, the Regional Manager of Zandra Division of the OP company has submitted his evidence in chief by one affidavit and he has proved some documents as Exhibit A series, B and C series.

In his cross-examination the OPW1 has stated that he does not know if the service Rule Book (Exhibit C series) is certified or not and when he was the member of the grievance committee, the

members of the FMRAI were also the members of the grievance committee and the OP company did not refer the case of the petitioner to the grievance committee and at the time of termination of the petitioner, the OP company did not give him one month notice alongwith one month salary or three months salary or compensation and he does not know whether the company informed the government authority regarding termination of the petitioner and he (OPW1) was not the enquiry officer of the domestic enquiry.

All the above cross-examinations of the OPW1 are against the case of the OP company.

Admittedly one domestic enquiry was held by the OP company against the petitioner and after enquiry the petitioner was found guilty and he was dismissed from service.

The OP company has proved one chargesheet dated 19.03.2021 (Exhibit C series) which was made in the said enquiry against the petitioner.

On perusing the said chargesheet dated 19.03.2021 submitted by the OP company, I find that at first some allegations have been made by the OP company against the petitioner in three and half pages of the said chargesheet and then in the said chargesheet the OP company has mentioned nine instances as the acts of misconduct and the said chargesheet dated 19.03.2021 does not

specifically mention as to whether the said nine acts of misconduct are the charges framed against the petitioner.

But it is clear that in the same document dated 19.03.2021, chargesheet and those nine instances of misconduct have been mentioned.

During examination of the OPW1 and argument, the OP company has orally submitted that those nine instances of misconduct as mentioned in the bottom of the page dated 19.03.2021 are charges framed against the petitioner on the basis of the allegations as made in the three and half pages of the said document dated 19.03.2021 which is mentioned as chargesheet.

According to law, chargesheet and charges cannot be framed together in one page or pages and charges have to be framed in separate page/pages.

According to law, there is a difference between chargesheet and charge, and in chargesheet the allegations *in toto* are explained but in the articles of charges, every allegation with date, time and place of offence have to be specifically mentioned and how the said allegations have been committed and the concerned violation of the service rules or standing order in respect of each allegations has to be mentioned specifically and clearly so that the offender may easily understand the allegations completely to give reply to the said charges.

The Ld. Lawyer for the petitioner has submitted the following decisions of the Hon'ble Court for consideration in this case –

1. *The Hon'ble Supreme Court's decision in a case namely The Government of Andhra Pradesh and Ors. Vs. A. Venkata Rayudu as reported in AIR ONLINE 2006 SC page 544 shows as to how the charges are framed article-wise.*

2. *The Hon'ble Supreme Court has held in a case namely Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank as reported in 2011 AIR SCW page 5327 that "the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges and an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice."*

3. *The Hon'ble Supreme Court has held in a case namely Sawai Singh Vs. State of Rajasthan as reported in 1986 AIR page 995 that "if the charges are vague, it is very difficult for any accused to meet the charges fairly and non-allegation of the delinquent either before the enquiry officer or before the High Court that the charges were vague, does not by itself exonerate the department to bring home the charges and a departmental enquiry*

entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action."

4. *The Hon'ble Supreme Court has held in a case namely Surath Chandra Chakrabarty Vs. State of West Bengal as mentioned in 1971 AIR page 752 that "there could be no doubt that the appellant was denied a proper and reasonable chance to defend himself by reason of the charges being altogether vague and indefinite."*

In this present case the said nine acts of misconduct of the petitioner which have been mentioned in the bottom portion of the chargesheet dated 19.03.2021, which have been claimed by the OP company as the nine charges framed against the petitioner as his misconduct, **do not specifically mention** who did not submit false reports of visit to doctors or false expense claims and who made wilful insubordination or disobedience to the lawful order of a superior and who was that superior and who did not submit daily report form, expense statement and other reports in time and who misused company promotional inputs and who habitually failed to comply with any of the provisions of the company's service rules and what are the specific provisions of the company's service rules which were not complied and who was guilty of habitual negligence whose acts were prejudicial to the interests of the OP company and subversive of discipline to the interests of the OP company and when the said misconduct

took place and how and where said misconduct took place and date and time and place of occurrence of the said misconduct.

So it is clear that the said nine charges are totally vague, indefinite, meaningless and unspecific and it is not possible for any person far to speak of the petitioner to understand the language of the said charges clearly for submitting his reply for the said charges and this vague charges prove that the principles of natural justice and other laws of the land were not followed by the OP company at the time of framing of said charges fairly and such type of charges have no legal value.

In every departmental or domestic enquiry, charge is the **main pillar** of the said enquiry and fair charges are framed to enable the delinquent to know the meaning of the languages of the charges for giving reply to the said charges and if the charges are vague and indefinite, the entire domestic proceedings, domestic enquiry and finding by the enquiry officer become baseless and valueless.

It is true that after receiving the said chargesheet dated 19.03.2021 the petitioner submitted his reply to the OP company and denied all the allegations of the said chargesheet, but if it is taken into account that the petitioner has admitted the allegations of a vague charge, that admission of the petitioner cannot be legally accepted because the charge was vague, indefinite, meaningless and valueless for which the admitted

reply of the petitioner will also be vague, indefinite, meaningless and valueless according to law.

So as the said nine charges framed by the OP company against the petitioner in this case are vague, indefinite, meaningless and valueless, there is no legal justified reason to discuss as to whether the enquiry proceedings, enquiry report and findings of the enquiry officer are correct or not and due to the said vague and illegal charges, it is held that the said enquiry proceedings, enquiry report and findings of the enquiry officer are also illegal and valueless, and as the said enquiry proceedings, enquiry report and findings of the enquiry officer are also illegal and valueless, the dismissal order of the petitioner dated 31.10.2022 which has taken place due to the said vague and illegal charges are illegal and meaningless and the enquiry is also illegal, invalid and meaningless and this dismissal order dated 31.10.2022 is liable to be set aside.

According to 9-C of the Industrial Disputes Act, 1947, the OP company did not refer the present dispute to the grievance redressal committee for settlement of the dispute and the OP company did not also refer the said dispute to the welfare committee of the OP company for settlement.

Section 6 of The Sales Promotion Employees (Conditions of Service) Act, 1976 is related to the application of certain acts to sales promotion employees and this section mentions six acts

which are applicable to the sales promotion employees and this Section does not specifically mention that The Industrial Employment (Standing Orders) Act, 1946 is applicable to the sales promotion employees and The Industrial Employment (Standing Orders) Act, 1946 is concerned with the Standing Orders.

As The Industrial Employment (Standing Orders) Act, 1946 is not applicable to the sales promotion employees according to Section 6of The Sales Promotion Employees (Conditions of Service) Act, 1976, it is proved that the Standing Orders according to The Industrial Employment (Standing Orders) Act, 1946 are not applicable to the sales promotion employees.

In this case the petitioner used to work in the OP company as the Medical Representative i.e. Sales Promotion Employees.

So the entire materials on record prove that on the basis of vague and illegal charges and by violating the mandatory provisions of the abovementioned different statutes, the OP company has dismissed the petitioner of this case most illegally with *malafide* intention and the OP company was so interested to dismiss the petitioner from his service anyhow, it did not follow the mandatory provisions of statutes and the above discussed conduct of the OP company is not praiseworthy at all and it thought itself above laws of the land to dismiss the workman from a private company.

The OPW 1 has admitted in his cross-examination that at the time of termination of the petitioner the OP company did not give him salary for one month or three months and compensation and one month's notice and did not notify the Government authority after termination of service of the petitioner.

Admittedly the petitioner was a permanent worker under the OP company on the date of his dismissal from service on 31.10.2022 and on that date he was dismissed from service but there is nothing on record to prove that the OP company followed all the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947.

Hence, I hold that the petitioner was not legally retrenched under Section 25-F of the Industrial Disputes Act, 1947 causing serious injustice to the petitioner.

Accordingly, the OP company is directed to pay Rs. 5,00,000/- as compensation to the petitioner for violating Section 25-F of the Industrial Disputes Act, 1947.

The Ld. Lawyer for the petitioner has cited 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.

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.

Accordingly, I hold that the petitioner is entitled to be reinstated in his previous service.

In his written statement the petitioner has pleaded that after termination of his service he has been suffering from acute financial problem and in his affidavit in chief he has stated the same and stated that since termination of his service he has not been gainfully employed elsewhere and the OP company has not pleaded it in its written statement and has not produced any cogent evidence on record to prove that after his termination the petitioner was employed gainfully elsewhere.

Hence, I hold that the petitioner is entitled to get full back wages alongwith consequential benefits since the date of his dismissal from service.

From the materials on record, it has been sufficiently proved that without any legal cause and with some false allegations the OP

company has dismissed the service of the petitioner by violating the *Principles of Natural Justice.*

Accordingly, I hold that in the colourable exercise of the rights of the employer, the OP company has victimised the petitioner and dismissed him from service most illegally by making unlawful labour practices according to Fifth Schedule of The Industrial Disputes Act, 1947.

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 according to Section 25 U of* The Industrial Disputes Act, 1947, for committing unfair labour practice *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.*"

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 and dismissed him from

service most illegally by violating the mandatory provisions of the laws of the land, the OP company is directed to pay Rs. 5,00,000/- 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 has to be reinstated in his previous post and place and as there is no proof to show that after termination of his service, he was gainfully employed elsewhere, I hold that he is entitled to get full back wages alongwith other consequential benefits.

Hence it is,

O R D E R E D

That the case no. 06/2023 under Section 2A(2) of The Industrial Disputes Act, 1947 is allowed on contest against the OP company with a compensation of Rs. 5,00,000 and Rs. 5,00,000/-, total

Rs. 10,00,000/- (Ten lakhs) to be paid to the petitioner by the OP company within 30 days from this date of order.

It is hereby declared that the order of termination dated 31.10.2022 passed by the OP company against the petitioner is illegal, invalid, baseless and unjustified.

It is hereby declared that the domestic enquiry held by the OP company against the petitioner is illegal and invalid.

The OP company is directed to reinstate the petitioner in his previous post immediately.

The OP company is directed to pay the full back wages alongwith other consequential relief from 31.10.2022 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

I/594333/2025

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

No. Labr/ 45 /(LC-IR)/22015(16)/36/2023 Date : 09.01.2025

ORDER

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

AND WHEREAS the 2nd Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 20.12.2024 in Case No. 06/2023 on the said Industrial Dispute Vide e-mail dated 23.12.2024 in compliance of u/s 10(2A) of the I.D. Act, 1947.

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/ 45 /1(5)/(LC-IR)/ 22015(16)/36/2023 Date : 09-01-2025

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 Suprakash Pal.
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/ 45 /2(3)/(LC-IR)/ 22015(16)/36/2023 Date : 09-01-2025

Copy forwarded for information to :-

1. The Judge, 2nd Industrial Tribunal, N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 23.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary