Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. 08/2022

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

Shri Saibal Kumar Nag

Petitioner

Vs.

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

Opposite Party

Date: 18.12.2024

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. 18.05.1992 and he was the All India Convenor of Himalaya Council (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 the problem started on the issue of visiting one grocery store namely *kirana* store immediately on the post lockdown period and it was not the official duty of the sales promotion employees to visit any grocery store but by making the said directions the OP company changed the condition of service of the Sales Promotion Employees and the said employees agreed to make 15 calls including said *kirana* stores but the OP company insisted on 20/25 calls without consulting with the Welfare Committee during the said lockdown period and their appointment letters did not mention that the said employees had to visit the said *kirana* stores and then the petitioner conveyed to the other Sales Promotion Employees regarding difficulties to visit the kirana stores thorough the Welfare Committee but on 18.02.2021 the OP company submitted one chargesheet against the petitioner on the ground of commission of misconduct in respect of engaging any form of agitation/demonstration, 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 24.02.2021 and then the OP company suspended him w.e.f. 24.03.2021 and the enquiry was started by the OP company and then one domestic enquiry was started against the petitioner in Bengaluru and the petitioner attended the said enquiry in Bengaluru in April 2021 and submitted his written statement and sought for defence representative to defend himself in the enquiry but the OP company insisted on taking any co-employee as the defence representative as per the service rule of the company but in spite of this, no co-employee agreed to assist the petitioner in the said enquiry and then the petitioner prayed for assistance of any office bearer of the FMRAI but the OP company rejected the said prayer of the petitioner and the petitioner denied virtual enquiry but the company continued the enquiry paying no heed to the demands of the petitioner and then the petitioner referred the dispute to the Labour Commissioner W.B.

for apprehension of imminent industrial dispute and the report of enquiry dated 25.06.2022 was sent to the petitioner and the petitioner was asked to give reply to the second show cause notice of the company but the petitioner prayed for time to give reply and on 25.07.2022 the petitioner submitted his reply to the second show cause notice and then by a dismissal order dated 16.08.2022 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 a complaint before the Labour Commissioner on 09.09.2022 praying for settlement of the dispute and the OP company did not submit any written statement to the Labour Commissioner and then after expiry of 45 days the petitioner has filed this case before this Tribunal and after his dismissal the petitioner has not been employed anywhere gainfully and he has been suffering acutely to maintain himself and his mother, wife and two daughters 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 the petitioner was employed in the OP company as the Medical Representative in 1992 and due to his inappropriate behaviour at workplace, his negligence for work, for not delivering the work assigned, etc., chargesheet was submitted against him by the company and subsequently domestic enquiry was initiated and after holding domestic enquiry the enquiry officer submitted his report and findings holding him guilty of the charges of misconduct and sufficient opportunities were given to him to prove himself and the OP company has never recognised any union or council and in the Grievance Committee the dispute was discussed and settled amicably from time to time and due to COVID 19 period the Grievance Committee could not function and during

the post lockdown period the OP company decided to promote pharmaceutical products and sell it in the kirana stores and making 25 calls including kirana stores is not connected with the show cause notice or chargesheet given to the petitioner and for misconduct of any worker the OP company has right to take action according to law and for serious acts of misconduct in employment chargesheet was submitted against the petitioner and for illness of the petitioner the company gave him option to attend the enquiry either virtually or physically and as per the service rules of the company, the petitioner has to take assistance of a co-employee and he did not attend the enquiry and did not produce any evidence in his support and then according to law he was dismissed from his service and the company submitted his statements to the Joint Labour Commissioner, W.B. and this Court has no jurisdiction to try this case because according to the service rules, only Bengaluru Court has the jurisdiction to consider any dispute 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:

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 Medical Representative on 18.05.1992 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 one preliminary issue was framed as *"has this Tribunal any jurisdiction to try this case?"* according to the prayer of the OP company and after hearing both sides that preliminary issue was heard and on 26.12.2023 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 Kolkata in his house and work in the Howrah Division of the OP company 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.

According to Section 20(c) of the Code of Civil Procedure, 1908, every suit shall be instituted in a Court within the local limits of whose jurisdiction, the cause of action, wholly or in part, arises.

So it is clear from the abovementioned circumstances that the petitioner had cause of action in part according to *Section 20(c) of the Code of Civil Procedure, 1908* because before termination of his service he used to reside in Kolkata and work in the Howrah Division of the OP company and the domestic enquiry was held in the head office of the OP company in Bengaluru but the dismissal order was sent to the house of the petitioner 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 (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 declarationthat 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, Saibal Kumar Nag, 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 kirana shop is a grocery shop and the Welfare Committee is still now in existence in the OP company and he attended hearing in the domestic enquiry held in Bengaluru and his job was to visit doctors, chemists and stockists to promote the products of the OP company and one Grievance Redressal Committee is still in existence in the OP company and the OP company instructed him to visit the grocery shop but he did not visit it and he was holding the post of all India convenor and he asked for defence representative from outside but the OP company did not allow him to appoint any outsider for his defence and he did not cross-examine the witnesses of the OP company and he did not submit any document in that enquiry.

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 series and C series.

In his cross-examination the OPW1 has stated that the OP company used to send its workers to the kirana stores for promoting of *Ayurvedic* products including sanitiser made by the OP company but he has not mentioned it in his affidavit in chief and in para no. 05 of his affidavit in chief he has mentioned that the appointment letter of the petitioner mentions clearly that he was employed as a sales promotion employee for promoting pharmaceutical products of the OP company and in para No. 06 of his affidavit in chief he(OPW1) has stated that the petitioner was involved in agitation against the OP company with the help of social media but he (OPW1) has not submitted any document to show that the petitioner was involved in instigating the fellow colleagues not to perform the duties assigned by the OP company and the OP company did not refer the matter to the Grievance Committee though allegedly the petitioner has been continuing illegal activities as per para No. 07 of his affidavit in chief and service rules of the OP company do not mention about any welfare or grievance redressal committee of the OP company and he (OPW1) was one of the members of the grievance committee and the present problem of the petitioner was not referred to the grievance committee and the petitioner was the All India Council Convenor of the Himalaya Wellness Council and at the time of termination of the petitioner the OP company did not give him salary for one month or three months and he does not know whether the OP company gave the petitioner any compensation at the time of his termination and the OP company did not take any prior permission of the government concerned before terminating the petitioner and did not notify the said termination to the government after termination.

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 18.02.2021 (Exhibit A series) which was made in the said enquiry against the petitioner and the petitioner gave one reply dated 24.02.2021 to the said chargesheet and in his reply dated 24.02.2021 the petitioner denied all the allegations of the said chargesheet and did not admit the said allegations.

On perusing the said chargesheet dated 18.02.2021 submitted by the OP company, I find that at first some allegations have been made by the OP company against the petitioner and then in the said chargesheet the OP company has mentioned five instances as the acts of misconduct and the said chargesheet dated 18.02.2021 does not **specifically** mention as to whether the said five acts of misconduct are the charges framed against the petitioner.

But it is clear that in the same page dated 18.02.2021, chargesheet and those five instances of misconduct have been mentioned.

During examination of the OPW1 and argument, the OP company has orally submitted that those five instances of misconduct as mentioned in the bottom of the page dated 18.02.2021 are charges framed against the petitioner on the basis of the allegations as made in the middle portion of the said page dated 18.02.2021 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 five acts of misconduct of the petitioner which have been mentioned in the bottom portion of the chargesheet dated 18.02.2021, which have been claimed by the OP company as the five charges framed against the petitioner as his misconduct, do not specifically mention who was engaged in agitation or negligent in his work, or 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 five 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 18.02.2021 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 bevague, indefinite, meaningless and valueless according to law.

So as the said five charges framed by the OP company against the petitioner in this case are vague, indefinite, meaningless and valueless, there is no 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 16.08.2022 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 16.08.2022 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.

In this case the OP company has taken a plea that according to the service rules of the OP company, the Medical Representatives are bound to visit the grocery shop i.e. kirana stores for promoting ayurvedic products and sanitizer made by the OP company.
In his cross-examination the petitioner has admitted that the OP company instructed him to visit the grocery/kirana shop but he did not visit it.

According to Table of Section 15 of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the provisions of clauses of (c) and (d) of Section 3 of this act shall not apply to the following class of advertisement and conditions for advertisement of medical literature and conditions as mentioned in serial no. 04 of the said Table of the said act and as per this serial no. 04 of the said Table, the advertisement can be made for medical literature distributed by the medical retailers appointed by manufacturers, importers or distributers of drugs, duly licensed under the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Rules thereunder and as per the serial no. 04 of the said Table, the conditions are –

1. The advertisement contains only such technical information as is required for the guidance of registered medical practitioners. In regard to therapeutic indications of drugs, the manner of their administration, their dosage schedule, their side effects and the precautions to be observed in treatment.

2. The distribution of such literature is confined **only** to the registered medical practitioners, hospitals, dispensaries, medical and research institutions and chemists and druggists or

pharmacies duly licensed under the provisions of the drugs and cosmetics rules.

So according to the above provisions of the abovementioned act, only medical literature can be advertised and it does not mention that advertisement for *ayurvedic* products of the OP company has to be made in the **grocery shop** by the medical representatives.

In his cross-examination the petitioner has stated that he used to deal with the medical products only as the medical representatives but the OP company has stated in this case that he alongwith other medical representatives are duty bound to go to the grocery/kirana shops for promoting the products of the OP company.

So it is clear that the OP company has stated about change in the conditions of service applicable to the worker but the OP company has not produced and proved any document to show that according to Section 9A of the Industrial Disputes Act, 1947, the OP company has changed the conditions of service of the petitioner by giving one notice in the prescribed form regarding change of condition of service proposed to be effected to the petitioner before asking the petitioner to visit the grocery shop for the purpose of promoting the products of the OP company.

So it is clear that by violating the provisions of Section 9A of the Industrial Disputes Act, 1947, and provisions of serial no. 04 of the Table of Section 15 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the OP company illegally directed the petitioner to visit the grocery/kirana shopfor the purpose of promoting the products of the OP company.

Admittedly on 16.08.2022 the OP company has dismissed the petitioner from his service.

Record shows that on 16.02.2022 the West Bengal Medical and Sales Representatives' Union filed a petition before the Labour Commissioner, Government of West Bengal with the apprehension of imminent victimisation (Exhibit A series) and then on 07.07.2022 the Joint Labour Commissioner, W.B. asked the OP company to appear before him for a discussion regarding deduction of subsistence allowance (Exhibit A series) and then on 11.07.2022 the said union again made one correspondence with the Joint Labour Commissioner, W.B. by a letter (Exhibit A series) and on 25.07.2022the said union again made one correspondence with the Joint Labour Commissioner, W.B. by a letter (Exhibit A series) and then on 04.08.2022 the Joint Labour Commissioner asked the OP company by a letter to appear with documents (Exhibit A series) and then by a letter dated 08.09.2022 the said union informed the Joint Labour Commissioner about dismissal of the petitioner on 16.08.2022 by violating the provisions of Section 33 of The Industrial Disputes Act, 1947 (Exhibit A series), and then by a letter dated 09.09.2022 the petitioner requested the Joint Labour Commissioner for making settlement of the dispute (Exhibit A series) and then by a letter dated 11.10.2022 (Exhibit A series) the Joint Labour Commissioner asked the OP company to submit its written comments and by a letter dated 12.09.2022(Exhibit A series) the Joint Labour Commissioner directed the OP company to showcause as to why legal action will not be taken against it for violating Section 33 & 31 ofThe Industrial Disputes Act, 1947 and then by a letter dated 23.11.2022 (Exhibit A series) the Joint Labour Commissioner asked the OP company to report of compliance regarding violation of Section 33 of The Industrial Disputes Act, 1947.

So all the abovementioned exhibits sufficiently prove that during the pendency of the conciliation proceedings before the Labour Department, Government of West Bengal, the OP company dismissed the petitioner from his service illegally by violating Section 33 of The Industrial Disputes Act, 1947.

According to Section 33 of The Industrial Disputes Act, 1947, *without the express permission in writing of the authority concerned, during pendency of any conciliation proceeding, the company concerned cannot discharge or dismiss any workman in respect of disputes of misconduct.*

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 of three months and compensation 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 16.08.2022 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 to maintain himself and his family members and he is not gainfully employed elsewhere and in his affidavit in chief he has stated the same and the OP company 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.*
In the chargesheet (Exhibit A series) dated 18.02.2021, the OP company has framed one allegation or charge against the petitioner to the point that *"engaging in any form of agitation/demonstration/ inciting others to engage in unjustified strikes in contravention of the provisions of any law or rule having the force of law in stay–in–strikes/slowdownofwork prejudicial to the interest of the company*."

Admittedly the petitioner was the All India Convenor of the FMRAI and he was the office bearer of the said union.

I have already discussed above that the OP company has failed to prove the allegation or charge no. 01 alongwith other charges mentioned in the chargesheet dated 18.02.2021 but the OP company has dismissed service of the petitioner on account of his Trade union activities and other allegations.

Such type of dismissal of the petitioner by the OP company falls within the example of unfair labour practice of the OP company according to Fifth Schedule of The Industrial Disputes Act, 1947.

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. 08/2022 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 16.08.2022 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 16.08.2022 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/591565/2024

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

No. Labr/ 04 /(LC-IR)/22015(16)/36/2023 Date : 03-01-2025

ORDER

WHEREAS an industrial dispute existed between M/s. The Himalaya Wellness Company (formerly The Himalaya Drug Company) and their workman Shri Saibal Kumar Nag , 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 18.12.2024 in Case No. 08/2022 on the said Industrial Dispute vide e-mail dated 19.12.2024 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/ 04 /1(6)/(LC-IR)/ 22015(16)/36/2023 Date : 03 - 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 Saibal Kumar Nag.
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/ 04 /1(3)/(LC-IR)/ 22015(16)/36/2023 Date : 03-01- 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 19.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary