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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.4221 of 2022
Decided on: 14.10.2025

Auckland House School & others … Petitioners

Versus

State of Himachal Pradesh & others … Respondents

Coram
Hon'ble Mr. Justice Ajay Mohan Goel, Judge.
Whether approved for reporting?[1]Yes

For the petitioners	:	Mr. Naresh. K. Sood, Senior Advocate, with Mr. Aman Sood, Advocate.
For the respondents	:	Mr. Pushpinder Jaswal, Additional Advocate General, for respondent No.1-State. Ms. Shikha Chauhan, Advocate, for respondent No.2. Respondents No.3 and 4 *ex parte*.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has prayed for the following reliefs:-

> "*(i) That action of the Respondent no.1, whereby old reference (Annexure-C) made under section 10 of the Industrial Disputes Act, 1947 has been amended and superseded by "corrigendum" dated 26th June 2019 (Annexure -F) as a consequence whereof Respondent no.2 has now been allowed to amend its old claim petition (Annexure -D) with fresh claim petition (Annexure-G) before the Learned Industrial tribunal cum- Labour court, may kindly be quashed and set aside.*

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

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(ii) order dated 07/05/2022 That impugned (Annexure 1), whereby the application dated 11/03/2020 filed by the petitioners (Annexure -H) has been dismissed upholding the "corrigendum" dated 26th June 2019 (Annexure-F) may also be quashed and set aside."

2. Brief facts necessary for the adjudication of this petition are that in an industrial dispute raised by the respondents herein, the appropriate Government made the following Reference to the learned Labour Court to be answered:-

"*1 "Whether demand no 1, 7, 8, 12, 14, 15, 16 & 21 raised by the Auckland House School Workers Union, 9, Bawa Building, The Mall, Shimla-3 vide demand notice dated-nil, received on 28.7.2016 (Copy-Enclosed) before and to be fulfilled by (i) The Employer/ Principal Coordinator/ Principal/ Manager, Auckland House School (Girls & Boys) Lakkar Bazaar, Shimla, H.P. (Principal Employer) (1) The Employer/ Manager, M/s Sanchi Management Services Pvt. Ltd., SCO 358, 2nd Floor, Sector-44D, Chandigarh. (Contractor Company), is legal and justify ? If yes, what monetary and other benefits, the aggrieved workmen are entitled to from above employers/ management?*

2. "Whether action of the Employer/ Principal Coordinator/ Principal/ Manager, Auckland House School (Girls & Boys) Lakkar Bazaar, Shimla, H.P. to change the service conditions of its workers, as per list in above demand notice without complying with the provisions of

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the ibid Act, is legal and justified? If not, what relief and compensation the aggrieved workmen are entitled to from above employers?"

3. During the pendency of the proceedings before the learned Labour Court, the appropriate Government again issued a Corrigendum, dated 26.06.2019 (Annexure-F), which reads as under:-

"***Corrigendum***

With reference to this office notification of even noin respect of the industrial dispute of the Auckland House School Workers Union, 9 Baws Building, The Mall, Shimla-3 and (1) The Employer/ Principal Coordinator Principal Manager, Auckland House School (Girls & Boys) Lakkar Bazaar, Shimia, HP (Principal Employer) Di) The Employer/ Manager, M/s Sanchi Management Services Pvt. Ltd., SCO 358, 2t Floor, Sector-441), Chandigarh. (Contractor Company).

In the issue no. 2, the words, "Whether action of the Employer Principal Coordinator/ Principal/ Manager. Auckland House School Girls & Boys) Lakkar Bazaar, Shimla, H.P to change the service conditions of its workers, as per list in above demand notice without complying with the provisions of the ibid Act, is legal and justified? If not, what relief and compensation the aggrieved workmen are entitled to from above employers?" may be read as, Whether action of the Employer/ Principal Coordinator Principal/ Manager, Auckland House School (Girls & Boys)

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Lakkar Bazaar, Shimla, HP. to change the service, conditions of us workers and finally their services were terminated by the Employes Manager, Mis Sanchi Management Services Pvt. Ltd., SCO 358, 2th Floor, Sector-44D. Chandigarh during the course of the conciliation proceedings, as per list in above demand notice without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement ohiory Ay consequential service benefits and compensation, the wide from above employers?"

4. Thereafter, the petitioners herein filed an application under Section 151 of the Civil Procedure Court, calling upon the learned Labour Court to reject the Corrigendum dated 26.06.2019, issued by the Joint Labour Commissioner. In terms of order dated 07.05.2022 (Annexure-I), this application filed by the petitioners has been dismissed by the learned Labour Court.

5. Feeling aggrieved, the petitioners have filed this writ petition, assailing Annexure-F, dated 26.06.2019, in terms whereof, the Reference No.2 was amended as well as the order of rejection of the application filed by the petitioners before the learned Labour Court.

6. Learned Senior Counsel for the petitioner argued that once the Reference stood made by the Appropriate Government to the

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learned Labour Court, there was no power vested in the learned Labour Court to amend the same as was done in terms of the impugned Corrigendum. He further submitted that this extremely important aspect of the matter has been ignored by the learned Labour Court, which has resulted in the passing of the impugned order. Learned Senior Counsel submitted that the Reference made earlier vide Annexure-C, dated 06.04.2017, was on the basis of the Demand Notice which was raised by the respondents qua which the conciliation proceedings took place. He submitted that the subsequent Corrigendum incidently has been issued on the basis of a development which took place during the conciliation proceedings, but qua which neither there was any industrial dispute raised nor any conciliation had taken place, which were pending before the Officer. He submitted that in this backdrop, the Corrigendum issued by the Appropriate Government is *per se* not sustainable in the eyes of law and the order passed by the learned Labour Court which is assailed herein is also not sustainable.

7. On the other hand, learned Counsel for the respondents while defending the order submitted that there is a power of amendment vested with the Appropriate Government and it is not as if the Reference once made cannot be amended, has referred to the

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judgment passed by the Hon'ble High Court of Allahabad in *Writ Case No.15390 of 2018*, titled *M/s Imi Norgren Herion (Pvt.) Ltd.* Versus *Labour Court, U.P. Noida And 3 Others*, delivered on *08.10.2018*, in which Reference has been made to the judgments of the Hon'ble Supreme Court of India, which as per her have held that the Appropriate Government has a right to amend or vary a Notification in exercise of powers vested under Section 21 of the General Clauses Act. She further argued that otherwise also, as the amendment which was incorporated in the Reference was only qua termination of the services of the employees, which termination is not in dispute and it is also not in dispute that the termination took place during the pendency of the conciliation proceedings and this issue was also raised in the claim petition preferred before the learned Labour Court, therefore, there is no infirmity in the Corrigendum issued by the Government as the same simply avoided multiplicity of litigation. Learned Counsel further argued that as far as the order passed by the learned Labour Court on the application filed by the petitioners is concerned, once the learned Labour Court had received the amended Reference, it had no authority to adjudicate upon the power of the State Government to make or vary or amend any such Reference and therefore, as there is no infirmity

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in the order impugned passed by the learned Labour Court, this petition being devoid of any merit be dismissed.

8. I have heard learned Senior Counsel for the petitioner, learned Additional Advocate General and learned learned Counsel for the private respondent and have also carefully gone through the impugned Corrigendum as well as the order under challenge passed by the learned Labour Court.

9. Few facts which are not in dispute and which are material for the adjudication of the present petition are that the industrial dispute which was raised by the respondents, failure of conciliation wherein resulted in the issuance of earlier Notification dated 06.04.2017, was not related to the termination of the services of the employees concerned. The Demand Notice was raised qua other grievances of the employees and as the conciliation before the Conciliation Officer failed, the appropriate Government made References in terms of Notification dated 06.04.2017, to the learned Labour Court to be answered. The termination of the employees was an event which took place during the pendency of the conciliation proceedings, but it was independent of the Demand Notice as well as the conciliation proceedings.

10. That being the case, this Court is of the considered view

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that the Appropriate Government in the absence of being seized with the issue of termination of the services of the employees by way of a Demand Notice or an industrial dispute raised in this regard by the aggrieved employees, had no authority to make a reference of this issue to the learned Labour Court. This extremely important aspect of the matter was ignored by the Appropriate Government when it issued Corrigendum dated 26.06.2019. The appropriate Government erred in not appreciating that as the termination of the services of the employees was a fresh cause of action, the aggrieved person could either have agitated the same by raising an industrial dispute or file a claim petition under Section 2A of the Industrial Dispute Act before the learned Labour Court. The appropriate Government *suo motu* had no authority to amend the Reference earlier made or otherwise make a Reference of this particular issue to the learned Labour Court.

11. Chapter-III of the Industrial Disputes Act, 1947 deals with Reference of disputes to Boards, Courts or Tribunal. Section 10 (1), which is a part of this Chapter, provides that where the appropriate Government is of the opinion that any industrial disputes exists or is apprehended, it may, at any time, by order in writing, either refers the dispute to a Board for promoting a

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settlement thereof; or refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication etc. This power is subject to the provisos which are provided under Section 10 (1) of the Act.

12. Section 2A of the Industrial Disputes Act provides that dismissal, etc., of an individual workman to be deemed to be an industrial dispute. This Section further provides that a person aggrieved by his discharge, dismissal, retrenchment or termination, may notwithstanding anything contained in Section l0 of the Act, make an application directly to the Labour Court or Tribunal for adjudication of the dispute.

13. Therefore, a harmonious reading of these two Sections only leads to one conclusion that the Appropriate Government can refer the dispute to the learned Labour Court only when it is of the opinion that any industrial dispute exists or is admitted. This opinion can only be formulated by the Appropriate Government if any demand is raised by the aggrieved person before the Appropriate Government.

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14. In the present case, in the absence of any demand having been raised by the aggrieved persons with the Appropriate Government qua their alleged illegal termination, no Reference either by way of amendment or otherwise could have been made by the Government on this count. This does not mean that the aggrieved persons were remedy-less. They either could have independently raised a fresh demand or could have invoked the provisions of Section 2A of the Industrial Disputes Act. However, the Appropriate Government *per se*, *suo motu*, independently did not have any jurisdiction to amend the Reference in the peculiar facts of this case in the mode and manner in which it has been done vide Annexure-F, dated 26.06.2019.

15. In light of above observation, this petition is allowed. Corrigendum dated 26.06.2019 (Annexure-F) is quashed and set aside. As this Court has set aside Corrigendum dated 26.06.2019, the impugned order passed by the learned Labour Court, in terms whereof, an application filed under Section 151 of the Civil Procedure Code was rejected by the learned Labour Court is also set aside by observing that otherwise also the order passed therein stands rendered otiose. As far as the aggrieved workmen are concerned, they are at liberty to approach the learned Labour Court

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with regard to their illegal termination under Section 2A of the Industrial Disputes Act and of course, delays and latches shall not come in their way in light of the peculiar facts of the case.

16. The petition stands disposed of in above terms. Further learned Labour Court shall answer only the Reference originally made to it by the Appropriate Government. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

October 14, 2025
(Rishi)

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