

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**CWP No.5042 of 2024 and
connected matters.**

Reserved on: 18.06.2024

Decided on: 28.06. 2024

1. CWP No. 5042 of 2024

Seema Devi

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

2. CWP No. 5044 of 2024

Manju

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

3. CWP No. 5045 of 2024

Balbir Singh

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

4. CWP No. 5046 of 2024

Narender Kumar

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

5. CWP No. 5047 of 2024

Melo Devi

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

6. CWP No. 5048 of 2024

Lakshmi Devi

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

7. CWP No. 5049 of 2024

Ram Kumari

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

8. CWP No. 5050 of 2024

Gulzaro

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

9. CWP No. 5057 of 2024

Reeta Devi

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

10. CWP No. 5058 of 2024

Balwant Singh

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

11. CWP No. 5059 of 2024

Gurpreet Kaur

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

12. CWP No. 5060 of 2024

Vivek Kumar

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

13. CWP No. 5061 of 2024

Sunita Rani

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

14. CWP No. 5062 of 2024

Avdesh Kaur

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

15. CWP No. 5063 of 2024

Davinder Kumar

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

16. CWP No. 5064 of 2024

Ami Samal

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

17. CWP No. 5065 of 2024

Surjeet Kaur

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

18. CWP No. 5066 of 2024

Shakuntla

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

19. CWP No. 5067 of 2024

Hardev Singh

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

20. CWP No. 5068 of 2024

Amarjeet Singh

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

21. CWP No. 5069 of 2024

Khairat Singh

....Petitioner

Versus

The Occupier/Factory Manager M/s Penguin
Electronics Ltd. & Anr.

...Respondents

Coram

Ms. Justice Jyotsna Rewal Dua,

Whether approved for reporting? Yes

For the petitioner(s):	Mr. Shubham Sharma, Advocate, in all the petitions.
For the respondents:	None.

Jyotsna Rewal Dua, Judge

Involving common questions of law and facts,
these petitions are taken up together for adjudication. For
convenience, facts of CWP No.5042 of 2024 have been

Whether reporters of Local Papers may be allowed to see the judgment? Yes

referred to hereinafter.

2. Following reference was sent by the appropriate Government for adjudication to the learned Industrial Tribunal-cum-Labour Court, Shimla: -

"Whether the demand of Smt. Seema Devi w/o Shri Kishan Chand R/o Village Kund (Kud) PO Harot, Tehsil Bangana, District Una, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallelwal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallweal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?"

Learned Labour Court vide award dated 01.03.2023, has answered the reference against the claimant/petitioner, hence, the present petition.

3. Background facts may be summarized as under:-

3(i) The petitioner was engaged as a Technician on

18.10.2005 in respondent No.2-M/s Prithi Kitchen Appliances Private Limited, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. M/s Prithi Kitchen was taken over by respondent No.1-M/s Penguin Electronics in February, 2019.

3(ii) Conciliation meetings were held between the workers employed in M/s Prithi Kitchen and respondent No.2 Company. A settlement was arrived at between the parties on 15.02.2019 (Ex. R-2). In terms of the settlement, such of the workers, who were unwilling to work in the respondent No.2-company, were to be paid wages in lieu of three months' notice, retrenchment benefits, gratuity and other financial benefits in accordance with law as full and final settlement. The workers, who were interested to work in the respondent No.1-Company, were to resign from the previous company i.e. M/s Prithi Kitchen (respondent No.2) after receiving all benefits due to them. Subsequently they were to join as fresh recruits in respondent No.1-company.

Petitioner was released all the benefits due and admissible to her by respondent No.2-Company. She resigned from respondent No.2-Company on 15.02.2019 and

joined respondent No.1-Company as a fresh recruit.

3(iii) With the passage of time, production in respondent No.1-Company went down. Its financial position did not improve and hence, it was decided to close down the unit. Respondent No.1-Company offered employment to its workers in some other unit. This move was resented and opposed by the workers. Eventually, several rounds of meetings were held by respondent No.1-Company with the recognized representatives of the workers Union (INTUC), represented by its office bearers and a settlement was arrived at on 20.02.2020, that was registered on 25.02.2020 (Ex. R-1). In terms of the settlement, respondent No.1-Company agreed to pay a consolidated amount of Rs. 2 lacs to its workers as full and final settlement in lieu of their resignation. The petitioner tendered her resignation and accepted Rs.2 lacs paid to her by respondent No.1-Company towards full and final settlement.

4. In the claim petition, the petitioner asserted that her services were terminated by respondent No.1-Company on 20.02.2020 on the ground that the Company was being closed; Termination of petitioner's services was a biased,

unfair and unreasonable act of respondent No.1; The services of the petitioner had been terminated without affording any opportunity to her and without conducting any domestic inquiry; The termination of petitioner's services was illegal and unsustainable.

The respondent's defence was that the petitioner had tendered voluntary resignation after receiving Rs.2 lacs towards full and final settlement in lieu of settlement scheme arrived at between respondent No.1-Company and the authorized recognized representatives of the workers' registered Union (INTUC).

The parties adduced evidence. Learned Labour Court after considering the entire case record and submissions advanced for the parties, held that instant was not a case of termination of services of the petitioner. The petitioner had voluntarily resigned from her services in accordance with the settlement arrived at between the parties. Accordingly, the reference was answered against the workman. Feeling aggrieved, the petitioner has preferred this Writ Petition.

5. Consideration

I have heard leaned counsel for the petitioner(s) and considered the case file.

5(i). Following facts are material for the adjudication of the present lis :-

(a) The petitioner was previously employed as a workman in M/s Prithi Kitchen-Respondent No.2.

(b) M/s Prithi Kitchen was taken over by M/s Penguin Electronics-respondent No.1.

(c) In terms of the settlement arrived at between the workers of M/s Prithi Kitchen-respondent No.2 on 15.02.2019 (Ex. R-2), the petitioner received full and final financial benefits from M/s Prithi Kitchen; Resigned from M/s Prithi Kitchen on 15.02.2019 and joined respondent No.1-Company as a fresh recruit on 15/26.02.2019.

(d) The case file shows that the petitioner in the course of her cross-examination admitted having been paid salary by respondent No.1-Company without any work. The production in respondent No.1's unit concerned had gone down drastically.

(e) A settlement was arrived at between respondent

No.1 and the authorized representatives of the workers' Union (INTUC) on 20.02.2020 (Ex. R-1), whereunder, the workers, who had put in less than one year with respondent No.1 and were not willing to work in the company's other unit, were to be paid Rs.2 lacs each in lump sum towards full and final settlement in lieu of their resignation from the Company. The settlement reads as under:-

“समझौता नामा

(जे रे धारा 18-1 औद्योगिक विवाद अधियम 1947)

समझौता नामा आज दिनांक 20-02-2020 मुकाम गाँव सल्लेवाल तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

2. यश पाल

विवाद का विस्तृत विवरण

यह है कि प्रबंधन पक्ष कि फैक्ट्री पेंगुइन इलेक्ट्रॉनिक लिमिटेड गाँव सल्लेवाल तहसील नालागढ़ जिला सोलन हिमाचल प्रदेश में स्थित है जहा पर मिक्सी बनाने का काम किया जाता है प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी कि तरफ से कोई मांग ना होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ विना कार्य के खाली बैठे है जिस पर प्रबंधन ने कामगार व स्टाफ कि नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तवादता सल्लेवाल से दमन किया लेकिन स्टाफ कामगारों ने तवादला पत्र कि प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें

आज दोनो पक्षों में माननीय हरदीप बाबा प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश कि मध्यता कि वजह से यह समझौता विना किसी दबाव के हो गया है जो कि निम्नलिखित शर्तों पर हुआ है।

- 1. यह है कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जो कि प्रबंधन द्वारा स्वीकार किये जायेंगे।*
- 2. यह कि कामगारों द्वारा त्याग पत्र देने के उपरांत प्रबंधन उनका कुल चुकता*

हिसाब जिनमें BONUS LEAVE ENCASHMENT, अब तक कि सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष दुआरा जो पत्र मांग पत्र के रूप में श्रम अधिकारी बंदी को दिनांक 27-01-2020 को दिया जाया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र दुआरा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा आप इस पत्र पर व Failure Report पर कोई जागामी कार्यवाही ना की जाए
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बंदी के पास पंजीकृत करवाया जाएगा

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

Hardeep Singh Baba,
President INTUC (HP).”

(f) The petitioner accepted a sum of Rs.2 lacs paid to her by respondent No.1 as full and final settlement amount and resigned from the Company.

5(ii). Learned counsel for the petitioner contended that petitioner's resignation was not voluntary. She was compelled to resign. It was further submitted that present was a case of compulsory dismissal of the petitioner.

The above contention cannot be accepted in the

given facts: -

5(ii)(a) **Firstly**, it has not been disputed that work was not available in respondent No.1's unit where the petitioner was employed. Petitioner, during the course of her cross-examination, had herself admitted receiving salary without doing any work. Respondent No.1's offer of deploying the workers in its different unit had not been accepted by the workers including the petitioner. To resolve the impasse, a settlement was reached between respondent No. 1 Company and the workers represented by their authorized representatives (INTUC) (extracted earlier) on 20.02.2020. In terms of this settlement, workers, who wished to resign, were free to do so. They were to be paid Rs.2,00,000/- as full and final settlement of their dues.

5(ii)(b) At this juncture, it would be appropriate to extract Section 18 of the Industrial Disputes Act, 1947, which deals with the persons on whom settlement and awards are binding: -

“18. Persons on whom settlements and awards are binding.

(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to

the agreement.

- (2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.*
- (3) Section 18 renumbered as Sub-S. (3) of that section by Act 36 of 1956, Section 13 (w.e.f. 7.10.1956).] A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3-A) of section 10-A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on:-*
 - (a) all parties to the industrial dispute;*
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal] , as the case may be, records the opinion that they were so summoned without proper cause;*
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;*
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."*

5(ii)(c) It is also not in dispute that the petitioner had accepted a lump sum amount of Rs.2 lacs as compensation from respondent No.1 towards full and final dues in terms of settlement dated 20.02.2020 without raising any objection

and resigned from the job on 21.02.2020.

Learned Labour Court has taken note of the fact that the petitioner's resignation letter dated 21.02.2020 (Ex.R-5) admittedly, written in her own handwriting was duly produced on record. That the petitioner in her resignation letter had written that she was not in a position to continue further with the job and, therefore, tendered her resignation without any pressure.

Thus, it cannot be said that the petitioner did not resign or she had resigned under pressure. The petitioner had resigned of her own accord. Her resignation was promptly accepted by respondent No.1 and financial benefits in terms of settlement were released in her favour, which she accepted. At this stage, it will be in place to refer to ***Gyanendra Sahay Vs. Tata Iron & steel Co. Ltd.***¹ where the issue for consideration was whether the appellant was compelled to write and sign the application for premature/ voluntary retirement due to undue and excessive pressure exercised by the officers of the respondent Company. It was held that after having written a letter of voluntary retirement and after having accepted the retiral benefits without any

¹ (2006)5 SCC 759

protest, the appellant cannot turn around and say that he was compelled to submit his premature/voluntary retirement.

Relevant para from the judgment reads as under:-

“14) We have also perused the Memo of Appeal and other representation made by the appellant. The appellant has made a vague allegation that he was forced to take retirement. Neither he has made it specific nor had given the name of any officer who compelled him to write the letter dt.1st April, 1995 or exercised undue and excessive pressure to sign the letter of premature/voluntary retirement. Though the Labour Court has come to the conclusion that the appellant was compelled to submit the letter of resignation, the same is not supported by any acceptable evidence. It is settled law that suspicion and doubt cannot take the place of evidence. No finding of fact can be given on mere doubt and suspicion or on the basis of baseless allegations. The appellant having written letter of voluntary retirement and after having accepted the retiral benefits without any protest cannot now turn round and say that he was compelled to submit his premature/voluntary retirement. The appeal has absolutely no merits and we, therefore, have no hesitation to dismiss the same and to affirm the order passed by the learned Judges of the Division Bench of the High Court. No order as to costs.”

6. Conclusion

In the given facts of the cases, there is no escape from the conclusion that instant were not the cases where

services of the petitioners were terminated by respondent No.1-Company. The petitioners had joined as fresh recruits with respondent No.1 in February, 2019. On account of drastic fall in its production etc. in the unit, respondent No.1-Company had offered to transfer its workers (petitioners) to its other unit. The workers expressed their unwillingness to this proposal. Consequently, a settlement was arrived at between respondent No.1 and the authorized representatives of the worker union through the aegis of the INTUC. As per this settlement dated 20.02.2020, registered on 25.02.2020, the workers unwilling to work at the other unit of respondent No.1-Company, were to submit their resignation and were to be paid Rs. 2 lacs in lump sum as full and final settlement. Each of petitioners consciously accepted Rs.2 lacs as full and final settlement and resigned from respondent No.1-Company. Separate resignation letters were written and tendered by them. It was not a case of termination of petitioners' services, but a case of their having voluntarily resigned from respondent No.1-Company in terms of the settlement. Learned Labour Court, therefore, did not err in dismissing the claim petitions and answering the reference

against the petitioners.

7. Consequently, there is no merit in the present Writ Petitions. Hence, the same are dismissed.

The pending miscellaneous application(s), if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

June 28, 2024
R.Atal