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**(2013) 06 SHI CK 0112**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 2191 of 2008**

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| Baba Balak Nath Temple Trust | Vs | APPELLANT  |
| Presiding Officer            |    | RESPONDENT |

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**Date of Decision :** 26-06-2013

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H, 25N

**Citation :** (2014) 140 FLR 751 : (2013) LabIC 3827 : (2014) 1 LLN 156 : (2014) LLR 46

**Hon'ble Judges :** Rajiv Sharma, J

**Bench :** Single Bench

**Advocate :** Rajnish K. Lall, Vice and Mr. Sanjeev Sood, for the Appellant; Pramod Thakur and Ms. Meenakshi Sharma, Additional Advocate Generals for Respondent No. 2 and Ms. Kiran Lata Sharma, Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rajiv Sharma, J.—This writ petition is directed against the award, dated 04.08.2008, made by the learned Labour Court-Cum-Industrial Tribunal, Dharamshala, H.P., in Reference No. 184/2005. Key facts necessary for adjudication of this petition are that the respondent No. 3-workman (hereinafter referred to as "the workman" for the sake of convenience) was engaged by the petitioner-Management (hereinafter referred to as "the Management" for the sake of convenience) on 21.07.1997. He was retrenched on 14.12.1998. He raised an industrial dispute. The conciliation was tried. However, on the basis of the failure report, the State Government has made the following Reference to the learned Labour Court-Cum-Industrial Tribunal, Dharamshala, H.P.:

Whether the termination of services of Sh. Rajinder Kumar, S/o Sh. Ajit Ram, a workman, by the Sub-Divisional Officer (Civil) Cum-Chair, Trust Baba Balak Nath Temple, Deotsidh at Badsar, Distt. Hamirpur, H.P. w.e.f. 15.12.98 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified. If not, what relief of service benefits and the amount of compensation

the above aggrieved workman is entitled to?

Thereafter, the workman has filed the statement of claim. According to him, his services were terminated orally on 15.12.1998. He has completed 240 days preceding his retrenchment. He was not issued any show cause notice nor paid any compensation. The Management has violated the provisions of Section 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947.

2. The reply was filed by the Management. According to the Management, the workman was in fact engaged as seasonal workman. He was engaged during Navratara fair. It was denied that the persons junior him were retained at the time of termination of his services. It was also denied that the persons junior to him were re-engaged. Learned Labour Court-Cum-Industrial Tribunal, Dharamshala, H.P. has passed the award, dated 04.08.2008. Hence this petition.

3. Mr. Rajnish K. Lall, learned vice counsel for the petitioner has vehemently argued that the learned Labour Court-Cum-Industrial Tribunal, Dharamshala, H.P. has erred in law by holding that there was violation of Section 25-H of the Industrial Disputes Act, 1947.

4. Ms. Kiran Lata Sharma, learned counsel for respondent No. 3 has supported the award, dated 04.08.2008.

5. I have heard the learned counsel for the parties and gone through the pleadings carefully.

6. The workman was engaged on 21.07.1997 on daily wage basis. He was issued show cause notice and paid the compensation on 15.12.1998. Thus, there was no violation of Section 25-F of the Industrial Disputes Act. The workman could not substantiate that the persons junior to him have been retained at the time when his services were terminated before the learned Labour Court-Cum-Industrial Tribunal, Dharamshala, H.P.

7. The Management has placed on record the copy of details of the daily wagers engaged from 1997 to 2007 vide Ex. RX/A. The name of the workman figured in this list. According to the workman, the persons mentioned at Sr. Nos. 63 to 76 in Ex. RX/A were engaged after his retrenchment.

8. Mr. Rajnish K. Lall, learned counsel for the petitioner submitted that these persons were not in the same category, i.e., daily wagger category. However, it is evident from Annexure P-4, placed on record that Shri Baldev Singh was engaged on daily wage basis as Security Guard on 27.07.1999 and Shri Hans Raj was engaged as Halwai alongwith Shri Ravi Dutt on 05.02.2000. Two Sweepers were also engaged on daily wage basis on 01.06.2000 and 05.09.2003. These workmen have been engaged after the retrenchment of the respondent-workman on 14.12.1998.

9. Their Lordships of the Hon''ble Supreme Court in The Cawnpore Tannery Ltd., Kanpur Vs. S. Guha and Others, have held that Section 25-H recognizes the right

of a retrenched workman to be given an opportunity of re-employment when the employer has to employ additional hand. Their Lordships have held as under:

4. Then Mr. Sen argues that though under S. 25-H of the Industrial Disputes Act the principle has now been statutorily recognized that a retrenched workman must be given an opportunity of re-employment when the employer has to employ an additional hand, at the relevant time this provision was not in the statute book and it was erroneous in law to have virtually given effect to the said statutory provision retrospectively. In our opinion, this argument is misconceived. Even before 25-H was added to the Act industrial adjudication generally recognized the principle that if an employer retrenched the services of an employee on the ground that the employee in question had become surplus, it was necessary that whenever the employer had occasion to employ another hand the retrenched workman should be given an opportunity to join service. This principle was regarded as of general application in industrial adjudication on the ground that it was based on considerations of fairplay and justice, vide *Shri Vihuddananda Saraswathi Hospital V. Their Employees*, 1949-1 Lab LJ 111: (IT-West Bengal); *Kilburn and Co. and Mac-Neill and Co. V. Their Employees*, 1950-2 Lab LJ 125 (IT-West Bengal) and *Sri Annapurna Mills V. Certain Workmen*, (1953) 1 Lab LJ 43 (L.A.T.I. All). It is true that in the case of *Annapurna Mills* the discharge of the workmen was the result of the fact that the employer had closed his business and it was held that with improvement in circumstances if the employer reopened his business it was necessary that he should take back in his employment his old employees. It would be noticed that the principle which was applied to the case of an employer who re-opened his business which had been closed by him is substantially the same principle which requires the employer to give an opportunity to his retrenched workman when he has occasion to engage another servant. That is why the Labour Appellate Tribunal has observed that the principle now statutorily recognized by Section 25-H was, before the Act was amended, recognized by Industrial adjudicators in dealing with such questions. Therefore, we do not think that Mr. Sen is justified in contending that the order passed in the present proceedings against the appellant is contrary to industrial law.

10. The respondent-workman should have been given an opportunity to offer himself for re-employment before engaging the persons mentioned hereinabove. Thus, there was violation of Section 25-H of the Industrial Disputes Act, 1947. There is neither any perversity nor illegality in the award, dated 04.08.2008. Accordingly, in view of the observations and analysis made hereinabove, there is no merit in this petition and the same is dismissed, so also the pending application(s), if any. No costs.