**Before The Hon'ble State Administrative Tribunal At Shimla**

O. A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application under Section 19 of the Administrative Tribunals Act, 1985

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

Respectfully Sheweth:

1. Particulars of the Applicant:

As given in the Memo of Parties.

2. Particulars of the Respondents:

As given in the Memo of Parties.

3. Impugned Order:

That the applicant is aggrieved by the impugned order issued by the respondents on \_\_\_\_\_\_ (Annexure A-1) whereby they have ordered to terminate the services of the applicant w.e.f \_\_\_\_\_\_, without complying with the provisions of law, more particularly Section 25-F and other analogous provisions contained in the Industrial Disputes Act, 1947.

The said impugned order is arbitrary, illegal, malafide, violative of the Constitutional Rights and natural justice and issued in colourable exercise of power.

4. Jurisdiction:

That the applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the Case:

6.1 That the applicant submits that he was initially engaged as daily wager w.e.f. \_\_\_\_\_\_ at \_\_\_\_\_\_ and ever since the applicant has put in 240 days service in each calender year as per and this position of fact will also be clarified when the respondent department will annex the mandays chart alongwith their reply.

6.2 That the department of HP PWD carries out varieties of activities, like constructions of roads and buildings, their maintenance etc and as such comes under the definition of Industrial Establishment or undertaking in terms of Section 2 (ka) of the Industrial Disputes Act. As such with regard to retrenchment of the services of the workmen employed in the respondent department, the provisions as laid down in Section 25-F of the Industrial Disputes Act are attracted and the same are to be complied with in toto by the respondent department before having resort to the termination of the services of the workmen, skilled or un-skilled.

6.3 That now all of a sudden the respondents vide the impugned order (Annexure A-1) have issued a notice to the applicant terminating his services wef \_\_\_\_\_\_ and the said notice is not in consonance with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947 and therefore is void-ab-initio and is therefore liable to be quashed and set aside to uphold the rule of law.

6.4 That it is respectfully submitted that the work of constructions and maintenance is still going on in the respondent department, more particularly under the Sub Division where the applicant was working and the same work is now being got executed through the Nepali labours who are being hired and fired with a view to defeat the claim of the applicant for claiming regularisation in due course of time. It is submitted that the work of constructions is going on in constructing the Type-IV Quarters in Police Line Bharari and seven residential houses are being constructed for the Judges as well as maintenance work is still going on.

GROUNDS

6.5 That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others, each one of which is without prejudice to and independent of others :-

(a) That the impugned order of termination of the respondent is arbitrary, malafide, illegal, ultra vires, against the Articles 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(b) That the applicant has completed more than 240 days continuously and therefore the services of the applicant has been terminated in violation of Section 25-F of the Industrials Disputes Act.

(c) That the work for which the applicant was initially engaged still exists.

(d) That the persons junior to the applicant have been retained by the respondent department.

(e) That the respondent department has given fictional breaks at regular intervals in the service of the applicant so as to deprive him from being regularised or claiming other benefits under the rules and regulations. However, it is settled law that the such fictional breaks counts for continuous service under the specific provisions of the statute.

(f) That the respondents are estopped due to their own act, deed and conduct. The principle of the Promissory Estopple applies against the respondents.

(g) That the impugned order is against the well settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

7. Reliefs Sought:

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice:-

(a) Quash the impugned order of termination of services (Annexure A-1) of the applicant being issued arbitrarily, malafide and illegally by the respondents;

(b) Direct the respondents to re-engage the applicant against the same post at the same place in the same capacity with all the consequential benefits and grant him seniority ante-date and full back-wages alongwith interest @ 18% pa, in case the services of the applicant are terminated during the intervening period;

(c) Direct the respondents to produce all the relevant documents, more particularly Mandays Chart alongwith reply for perusal by this Hon'ble Tribunal;

(d) Allow the cost of this O.A.;

(e) Pass such other order or directions as deemed fit and proper in favour of the applicant.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND, SHALL EVER PRAY.

8. Interim Orders, If Prayed:

It is most respectfully prayed, that during the pendency of this O. A. the operation of the impugned order (Annexure A-1) may kindly be stayed in the interest of justice.

9. Details of Remedies Exhausted:

That the applicant submits that since the matter being of an urgent nature, there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal.

10. Matter not Pending with any other Courts Etc:

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble tribunal.

11. Particulars of Court Fees:

Court fees worth Rs 50/- is attached herewith.

12. Details of Index:

An index containing the details of the documents to be relied upon is enclosed herewith.

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Affidavit in support of O.A. under Section 19 of the Administrative Tribunals Act 1985.

I,\_\_\_\_\_\_, do hereby solemnly, affirm and declare as under:-

1. That the accompanying O.A. has been prepared under my instructions.

2. That the contents of paras 1 to 12 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_.

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_\_ of 2004

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Shimla Applicant

\_\_\_\_\_\_ Through, Advocate