



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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No. 195 Dispur, Thursday, 7th May, 2026, 17th Vaisakha, 1948 (S. E.)

GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
LABOUR WELFARE DEPARTMENT

NOTIFICATION

The 5th May, 2026

ECF No. 784715/23.-Whereas dispute between the Management of Kotalgoorie Tea Estate VS Workman Sri Domen Karmakar was referred to the Presiding Officer, Labour Court, Dibrugarh constituted under the Industrial Dispute Act, 1947 for adjudication and whereas an Award has been given on the dispute by the said Labour Court vide I.D. Case No. 05 of 2013, Award dated 24/4/2026 as shown in the Annexure hereto.

Now, therefore, in exercise of the powers conferred by Section 17(1) of the Industrial Disputes Act, 1947 (Act. XIV of 1947) as amended, the Governor of Assam, is pleased to direct that the said Award to publish by notifying at the Office of the Labour Commissioner, Assam, Guwahati.

(A W A R D As in the Annexure)

ASHRAFUL AMIN,
Joint Secretary to the Government of Assam,
Labour Welfare Department.

**BEFORE THE PRESIDING OFFICER, LABOUR COURT,
DIBRUGARH**

I.D. CASE NO. 05 OF 2013

Present: Utpal Prasad
Presiding Officer
Labour Court, Dibrugarh

SHRI DOMEN KORMAKAR
S/O LATE H. KORMAKAR
R/O KOTALGOORIE TEA ESTATE
UNDER ASSAM COMPANY LIMITED
P. O. & P. S., MARIANI,
DISTRICT JORHAT... .. WORKMAN

-VS-

THE MANAGEMENT OF
KOTALGOORIE TEA ESTATE
UNDER ASSAM COMPANY LIMITED
P. O. & P. S., MARIANI,
DISTRICT JORHAT MANAGEMENT

ADVOCATES WHO APPEARED FOR THE PARTIES

For the Workman	: Shri Wahidur Rahman, Advocate.
For the Management	: Shri Monikumtal Sarmah, Advocate,
Date of final hearing	: 22.10.2025
Date of Award	: 24.04.2026

A W A R D

1. In this case, after the award dated 09.08.2016 was passed by this court through one of the learned predecessors, with the direction to pass the award by also considering the evidence recorded in this proceeding after setting aside the said award on the ground that it was passed without considering the evidence recorded in this case, the Honourable Gauhati High Court has remanded it back vide judgment and order dated 21.05.2024 in WP(C)/4516/2017. Hence this case once again for a decision in terms of the aforesaid direction.
2. The instant proceeding was instituted by the aggrieved workman Shri Domen Karmakar against his dismissal from service, as a driver, by the Management of Kotalgoorie Tea Estate under Assam Company Ltd. The dismissal is said to have been after a domestic enquiry on the charge that he had, in spite of repeated cautions by his superior, driven the school bus belonging to the employer Tea Estate/Tea Company intentionally in a manner to cause damage to the properties of the employer company and had actually caused damage to the properties and, in giving effect to his said intention, had also caused death of a chowkidar named Basu Keot by knocking him down. He has claimed that the incident leading to death of the chowkidar was merely an accident and was due to mechanical failure in the bus. He has claimed that he has been victimised by the employer company due to some

ulterior motive by conducting a sham domestic enquiry. He states that neither his rights including *audi alteram partem* were respected nor is the conclusion of the enquiry officer based on the materials collected during the enquiry. Needless to say, he seeks his reinstatement with full back wages and benefits with retroactive effect.

3. Countering the claim, in its written statement of defence, the management of the employer tea company has reiterated the charges levelled against the workman and has justified his dismissal calling it based on a just and effective domestic enquiry. It has sought to resist the claim of setting aside of dismissal, reinstatement of the workman with full back wages and benefits.
4. After the rival pleadings, the following issues were framed by the concerned learned predecessor:-
 - i. *Whether this case is maintainable either in law or in fact?*
 - ii. *Whether the dismissal of the workman, namely, Sri Domen Karmakar w.e.f. 15.01.2013 is illegal?*
 - iii. *Whether the workman is entitled for reinstatement with full wages and other benefit with retrospective effect?*
5. Since issue no. 1 framed in this case vide order dated 29.01.2015 is no longer relevant in view of the fact without consideration of the evidence recorded in this case, the domestic enquiry held against the workman was held to be invalid, which is a part of set procedure for

deciding industrial disputes relating to discharge of dismissal, this court is of the view that said issue no longer requires a decision by this Court.

6. In support of his case, apart from examining himself as a witness, the workman examined one more witness named Shri Deben Patnayak [WW2]. Both were cross-examined on behalf of the management. Thereafter, from the employer company's side, three witnesses appeared and all of them were cross-examined. Then, after hearing both the sides, the concerned learned predecessor had passed the award on 09.08.2016 which has been set aside as set out in paragraph 1 of the award.
7. Since the question to be determined in this proceeding was justification or otherwise of dismissal of the workman, the Standing Order of the Employer Company under the Industrial Employment (Standing Orders) Act, 1946 was considered to have a bearing on it and, therefore, vide order dated 04.08.2025, this court had directed the management to produce the same and the order was complied with on 01.09.2025. Thereafter, the final hearing took place on 22.10.2025.
8. The management placed reliance on the written argument submitted by it on 28.02.2025 which, though was found in the case record, was perhaps inadvertently overlooked by my learned predecessor. The workman, through learned advocate Shri Wahidur Rahman, took this court through the record of the domestic enquiry, the evidence adduced before this court, and the various exhibits of both the sides to support his case.

9. He has also placed reliance on ***AIR 1985 SC 1121*** and the Judgment dated 10.04.2006 of the Honourable Supreme Court in ***Civil Appeal No. 2582 of 2006***. He has also placed reliance on a purported judgment of the Honourable Supreme Court of India with cause title ***State of Karnataka Vs. Satish*** without case number or mode of citation.
10. Learned advocate for the management submitted that he had nothing to state as a counter to the argument advanced on behalf of the workman.
11. In the case of ***Anil Kumar Vs. Presiding Officer and Ors. as reported in AIR 1985 SC 1121*** which learned advocate for the workman has placed reliance on, termination of service of the workman after domestic enquiry was set at naught. It was so as the enquiry report was a very cryptic one described in the judgment as follows:

"First paragraph sets out the charges. Then the dates on which the enquiry was held have been set out. Follows the names of witnesses produced on behalf of the management. Then follows a statement that evidence of the appellant and his witnesses were recorded. After that the report concludes as under:

His non-obeying of the instructions of his seniors and leaving the place of work without proper permission is a serious case of misconduct, negligence of duty and indiscipline.

There is a forwarding note at the foot of it."

12. The grounds for setting aside the dismissal, as stated by the Honourable Supreme Court were that the Inquiry Officer had not assigned a single reason why the evidence produced by the appellant did not appeal to him and on what grounds the evidences adduced by the management was preferred by him. The Honourable Supreme Court had stated that in a quasi judicial proceeding as such, reasoned order must be made which was not done. However, this is not the case in respect of the domestic enquiry held against the workman Domen Kormakar.
13. In the case of ***G. M. Tank vs. State of Gujarat & Anr. [Appeal (Civil) 2582 of 2006]***, the Honourable Supreme Court had made a decision on the following facts:

"The appellant was made subject of an enquiry under the Prevention of Corruption Act with the allegation of having disproportionate assets to the known source of his income and, the Enquiry Officer had submitted his enquiry report leading to his criminal prosecution under Prevention of Corruption Act in which he was honourably acquitted. Based on the same enquiry report, a departmental proceeding was initiated against him wherein he was found guilty and his services were terminated as per the departmental statutory rules. His acquittal by the Special Court was not challenged by the Anti-Corruption Bureau. However, he had challenged termination of his services before a Single Judge of the concerned High Court which failed. The letters patent appeal against the Single Bench Order also met the same fate. Thereafter special leave

was granted by the Honourable Supreme Court resulting in the Civil Appeal."

14. In the ensuing Civil Appeal, the Honourable Supreme Court had given the verdict that since the appellant was departmentally proceeded again on the basis of the same enquiry report after investigation by the Anti-Corruption Bureau and the same set of witnesses were examined in both the proceeding, in view of Honourable acquittal by the concerned criminal court on the same set of fact as in the departmental proceeding, contrary finding and the penalty inflicted after the departmental enquiry could not be upheld.
15. The law laid down, thus, was that when a criminal proceeding and the departmental proceeding are launched on the same set of facts and same set of evidence, Honourable acquittal (as opposed to acquittal on benefit of doubt or on some technical grounds) in the criminal proceeding must result in closure of a departmental proceeding/ enquiry and the alleged delinquent employee cannot be inflicted with any penalty under statutory departmental rules.
16. Learned Advocate Shri Monikuntal Sharma for the employer management, through his written argument, has taken this Court through the entirety of the rival pleadings and the evidence recorded in this case. He has pointed out that despite two cautions on behalf of the management on 02.02.2012 and 15.05.2012, to the workman for driving the vehicle carefully, on the fateful

day, the workman had driven the factory vehicle rashly and negligently resulting in death of another workman and, therefore, he had conducted himself in a manner amounting to gross misconduct according to the statutory standing orders of the Tea Estate under the Industrial Employment (Standing Orders) Act, 1946 and, therefore, has submitted that termination of the services of the workman Shri Domen Karmakar is justified.

17. The Judgment and order dated 21.05.2024 of the Honourable Gauhati High Court referring to above has clearly shown that the then learned predecessor had recorded his finding as to the validity of domestic enquiry against the workman without considering the evidence recorded by this Court. This makes it clear that validity of the domestic enquiry is no longer a matter of contention in this case. Moreover, when the said finding was not challenged being invalid per se and that the challenge was only on the ground that final award did not consider the evidence recorded before this court leading to direction by the Honourable High Court in paragraph 21 of the said Judgment. Obviously, the case of **Anil Kumar Vs. Presiding Officer and Ors. as reported in AIR 1985 SC 1121** relied on by the learned Advocate for the workman need not be relied into for the purpose of this case.
18. The issues framed in this case, as described in paragraph 4 of this award, can also not be decided with much benefit for the parties in view of decision on validity of the

domestic enquiry sans the evidence recorded in this case by this court.

19. Based on the materials on record and rival submissions advanced and keeping in view the direction of the Honourable Gauhati High Court, the following questions emerge for determination by this court:
 - a. *Whether, based on the evidence recorded, domestic enquiry held against the workman Shri Domen Karmakar be held as valid and proper?*
 - b. *Whether, even independent of the domestic enquiry, and on the basis of the evidence recorded in this case, the misconduct alleged against the said workman be said to have been proved on balance of probability?*
20. This court prefers to take up both the questions together for its decision.
21. The employer management, as is obvious, has already failed to justify the validity of the domestic enquiry held against the workman and therefore, burden of proof of proving that termination of services of the workman based thereon or otherwise is justified is on the employer management irrespective of the fact who led the evidence first in this Court. It is pointed out here that, for whatever reasons, the workman was allowed to adduce his evidence first in this case.
22. This Court has gone through the certified copy of the judgment passed by the learned S. D. J. M. (M), Titabor

in G. R. Case No. 817 of 2012 which, after discussing the evidence adduced before it, has held as follows:

"From the above discussion of evidence, I have found that although it appears from the evidence that the accused was driving the bus which hit the factory gate and the victim on the day of incident, but from the evidence on record, it is not established that the accused was driving the bus in a rash and negligent manner at the time of incident or it is not established that the accused caused death of the victim of the case by his rash or negligent driving. Hence, I have no other alternative but to hold the points for determination in the negative.

In the result, I have not found the accused guilty in this case. Hence, I acquit him from the charges of the case and he is set at liberty forthwith."

23. The points for determination, as recorded in the said judgment, read as follows:
- i. Whether the accused drove the bus bearing Registration No. AS-03-7483 on the public way in a rash or negligent manner as endangering human life, or to be likely to cause hurt or injury to any other person on 30.05.2012 at about 1.30 PM?*
 - ii. Whether the accused caused death of one Basu Keot by hitting him by his above-mentioned bus while driving the same in a rash and negligent manner on above mentioned date, time and place?"*
24. The aforesaid judgment shows that Sanjib Karmakar, Briundakan Karmakar, Bajit Singh Shekhon, Dr. N. K.

- Gogoi, Bhularam Nath and B. R. Mannan were examined before the learned S. D. J. M. (M) as PW1, PW2, PW3, PW-4, PW5 and PW6 respectively.
25. Before this court, on behalf of the employer management, following witnesses examined themselves as MW1, MW2 and MW3 respectively: Shri Rupam Handique, Shri Sidhartha Chetia Pator and Sri M. R. Boruah.
26. It is clear that while the criminal prosecution and the domestic enquiry against the workman were started because of the same incident, the set evidence in both the proceedings were not the same. However, it is clear that the concerned learned criminal court had acquitted the workman Shri Domen Kormakar holding that there was no evidence against him. Thus, the instant case cannot be said to be squarely covered by the decision of the Honourable Supreme Court in the case of ***G. M. Tank vs. State of Gujarat & Anr. [Appeal (Civil) 2582 of 2006]***.
27. MW1 has stated in his evidence on affidavit that he had seen that the school bus of the Tea Estate bearing registration no. AS-03/483 (sic.) was entering in a very rash and negligent manner towards the factory gate, had dashed against the said gate and had caused injury to Shri Basu Keot. However, during cross-examination, while once he has stated that he had seen the incident from behind the school bus from a distance of 100 feet and that the gate of the Tea Estate was closed and when the chowkidar had gone to open the gate the bus had knocked

him down, after a few sentences, he has stated that the accident took place while the bus was just moving out from the factory. At the beginning of his cross-examination, he has stated that he was summoned by the concerned criminal court as a witness but he had not attended the court for the case in which Domen karmakar was prosecuted for charges u/s 279/304(A) of Indian Penal Code. As has been mentioned above, the criminal court judgment does not mention the above fact. Nevertheless, as he has described himself as the Assistant Manager of the employer Tea Estate at the time of the accident, his failure to appear as a prosecution witness before the trial court creates a suspicion that in this court, he appeared to falsely implicate the workman. What is glaring in his testimony is that he himself has stated that the Investigating Officer has not examined him during investigation and that he had not gone to the concerned Police Station during investigation creating further suspicion as to how he could be a prosecution witness in the connected criminal case. He has contradicted his own statement in his evidence on affidavit that the concerned bus was moving towards the factory gate when the accident took place.

28. MW2, who submitted his affidavit of evidence on 08.07.2015, has stated that on the said date he was the Assistant Manager of Kotalgoorie Tea Estate. In his cross-examination he has stated that he had not seen the

accident. He has stated that in the domestic enquiry also, while adducing evidence, he had made the same statement. He has stated that at the relevant time of accident he was going for lunch and that his office is at a distance of around 200 feet from the factory. He also admits that the factory gate is not visible from his office. He has stated that the front of the bus had dashed against the factory gate. However, Exhibit C, exhibited by him, which is the report of the Motor Vehicle Inspector given after examining the bus, does not show that any damage was caused to the bus which makes it doubtful that the bus had dashed against the factory gate making his statement that when the bus was going out from the factory he had heard a sound, unbelievable. More so, when paragraph 4 of his affidavit shows that he had stated that because of the impact of the bus, the factory gate had been broken. Even though MW1 and MW2 have stated that the workman had been cautioned to drive the bus carefully, it does not go on to show that at the relevant time of the accident, the bus was being driven rashly and negligently. He has stated that Baljit Singh Saikhon had cautioned the workman to drive the bus carefully but Mr. Saikhon did not turn up before this court to examine himself and to corroborate this witness. He has also stated that the workman was outside the room when the domestic enquiry was conducted which means that there was blatant violation of principles of natural justice while conducting the domestic enquiry. He has also stated that

even at the time of recording of other witnesses during the domestic enquiry, the workman was kept outside the concerned room. This belies the statement of MW3, the Enquiry Officer, and an Advocate by profession, that the workman was present at the time and place of inquiry and that he was given the opportunity to cross-examine the witnesses.

29. The above shows that MW1 contradicted himself in being categorical whether the bus was entering into the factory campus or was leaving it. Even though MW2 has stated that the bus had dashed against the gate breaking it, Motor Vehicle Inspector's report does not support it. MW1, that claims to be an eyewitness to the incident, did not appear as a prosecution witness before the criminal trial court. Serious doubts arise as to truthfulness of his testimony as despite being a senior officer in the management of the employer tea estate and an eye witness to the incident, he did not offer himself as a witness to the police as is evident from his cross-examination.
30. The above shows that the management witnesses have themselves proved that principles of natural justice were blatantly violated during the domestic enquiry and therefore termination of the services of the workman, based thereon, was not justified. Further, even independent of the domestic enquiry, before this court, the employer management has failed to place any credible

evidence of truthfulness of the charges leveled against the workman and therefore, justifiability penal disciplinary action taken against him.

31. Since burden of prove to justify the finding of the domestic enquiry and termination based thereon, either in view of the domestic enquiry, or independent therefrom, has been held to be on the employer management, this court does not consider it necessary to consider the evidence adduced by the workman and the alleged contradictions between the workman and his witness. As such, this court holds that dismissal of the workman namely Shri Domen Kormakar w. e. f. 15.01.2013 is illegal and that he is entitled for reinstatement with full wages and other benefits with retrospective effect.
32. In this case, setting aside of termination of services of the workman Shri Domen Kormakar is not based on Honourable acquittal by a criminal court after prosecution initiated because of the same set of material as in the domestic enquiry and the same set of evidence as had happened in the case of ***G. M. Tank vs. State of Gujarat & Anr. [Appeal (Civil) 2582 of 2006]***. Rather, it is based on the fact that neither the domestic enquiry was a valid and lawful one nor has the employer management been able to prove the allegations against him by leading evidence in this court. Question naturally arises if allegations against him were indeed true, what was the necessity of examining witnesses in his absence as is clear from the evidence adduced in this case. As

such, it cannot be said that the termination of the workman was justified at any point of time. This makes his reinstatement with full back wages justified. It appears from the case record that the workman was aged 50 when he had adduced his evidence in this case on 12.03.2015. This indicates that he must have superannuated by now. As such, it is also held that the workman Shri Domen Kormakar is entitled to receive all the pensionary benefits deeming that he was never terminated from the service.

33. In the result, formally speaking, the **award** passed in this case is as follows:

"The employer management of Kotalgoorie Tea Estate under Assam Company Limited had illegally dismissed the workman Shri Domen Kormakar with effect from 15.01.2013 and that the said workman is entitled to his deemed reinstatement in his service with effect from 15.01.2013 with full back wages and all the pensionary benefits as if he had not been dismissed from his services. The employer management of Kotalgoorie Tea Estate under Assam Company Limited is, therefore, directed to pay all the aforesaid dues to the said workman within 30 days from the date this award becomes effective."

34. On 21.11.2025, the Industrial Relation Code, 2020 was brought into force creating an impression that by operation of section 104 of the said Code, the Industrial Disputes Act, 1947 was repealed. This resulted in a hiatus as the new Code did not speak of Labour Court and mandated that cases in the Labour Court shall be

transferred to the Industrial Tribunal created under the new Code (see section 51 of the new Code). Thereafter, on 08.12.2025, the Industrial Relations Code (Removal of Difficulties) Order, 2025 was notified whereunder, for the purpose of avoiding legal and administrative vacuum, Labour Courts were to continue as earlier. Section 103 of the Industrial Relations Code, 2020 did not provide for delegated power to the Central Government to revive Industrial Disputes Act, 1947 which means that even the Rules made thereunder cannot be deemed to have been revived. Consequently, the Assam Industrial Disputes Rules, 1958 cannot be legitimately said to be existing today.

35. Rules framed under the Industrial Relations Code, 2020 were struck down by the Honourable Supreme Court on 19.11.2025 by way of Judgment in the case of ***Madras Bar Association*** which means that no Rule under the new Code exists.
36. Since this Court has held the view that the Industrial Disputes Act, 1947 has been repealed by operation of section 104 of the Industrial Relations Code, 2020 and the present function of this Court is only under the Industrial Relations Code (Removal and Difficulties) Order, 2025 as a fill up gap measure, section 55(2) of the Industrial Relations Code, 2020 comes into play and therefore, this Court directs that duly authenticated copies of this award be sent to each of the workman and the employer management through speed post and the postal

registration receipt be kept safely with the case record. Under the same provision of law, the authenticated copy of this award be also sent to the State Government which is the appropriate government in the instant case.

37. In view of section 55(3) of the Industrial Relations Code, 2020, this Award shall become enforceable only after expiry of 30 (thirty) days from date of communication hereof as directed in the preceeding paragraph subject further to the provisos contained in the said sub-sections. Given under my hand and seal of this court on this the 24th day of April 2026.

L. K. SAIKIA,
Presiding Officer,
Labour Court, Dibrugarh.