



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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No. 444 Dispur, Wednesday, 19th August, 2026, 28th Sravana, 1948 (S. E.)

GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
LABOUR WELFARE DEPARTMENT

NOTIFICATION

The 14th August, 2026

ECF No. 830607/16.-Whereas dispute between the Management of Bimal Auto Agency VS Sri Subhodh Narayan Tiwari was referred to the Presiding Officer, Labour Court, Guwahati 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 Case under Section 2(A) No. 02/2024, Judgment dated 22/4/2026 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.

IN THE LABOUR COURT OF ASSAM KAMRUP(M) AT GUWAHATI

Present: Sri Lohit Kumar Saikia, AJS
Presiding Officer
Labour Court, Guwahati.

Case u/s 2(A) No. 02/2024

PARTIES:-

(1) Sri Subodh Narayan Tiwari

S/O Lt. Ramjapu Tiwari

R/O- Parshurampur, P.S- Pipara,

District- East Champaran, Bihar

Pin-845416

(2) Sri Tara Chand Sharma

S/O- Lt. Ram Niwas Sharma

R/O- Dansroli, P.S- Datarangarh

Dist- Sikar, Rajasthan.

..... **Applicants/ Workmen**

- Vs-

(1) Bimal Auto Agency

Adabari, Guwahati-781014

..... **O.P/Management**

APPEARANCE

For the Workmen : Mr. A Islam, Mr. J.I Mondal

For the Management :Mr. Bishwambar Sharma, Mr. Subhash Sharma, M.Hassan

Date of hearing/ argument : 23.3.2026

Date of Judgment was reserved : 22-4-2026

Date of Judgment was delivered: 09-07-2026

AWARD

1. This proceeding has been initiated on the strength of petition No.54/2024 u/s 2A(2) of the Industrial Act, 1947 by the workman with a prayer for full back wages due to illegal termination

The facts of the case of the workmen, in a nutshell, may be stated as follows:-

2. The case of the petitioner is that the applicants worked in the Petrol Pump of the opp. Party at Adabari. The applicant No. 01 joined in the service of the opp. Party on 17.07.1989 and whereas the applicant No. 02 joined in the service in 1998 and regularized w.e.f. 01.04.2011. Since the date of joining in the services, the applicants had continuously worked under the opp. Party on monthly salaried employees.
3. That the applicants had continuously worked in the petrol pump of the opp. Party till the month of February, 2018 without any break in services. As per terms of contract of the services, the applicants were paid a monthly salary of Rs. 8235/- after deduction of the Provident Fund and Employee State Insurance contribution. The said salary amount included food allowance of Rs. 1500/- and house rent allowance of Rs. 1000/- per month. Besides, the applicants were also paid a travelling allowance of Rs. 1000/- for visiting the home State once in a year for availing 28 days leave admissible to the workmen. Further, the opp. Parties also paid bonus @ 18% per annum on the annual salary of the applicants.
4. That on 16.12.2016, a Memorandum of Settlement was signed between the opp. Party and the Assam Petroleum Mazdoor Union incorporating certain terms and conditions as regards revision of pay and other allowances for the workmen under the petrol pump of the opp. party and besides the above scale of pay and allowances, it was also agreed that based on the length of services, annual increment was agreed to be granted to the workmen along with Contributory Provident Fund and Employees State Insurance (ESI).
5. That even though Memorandum of Settlement was signed between the opp. party and the workmen Union for revision of pay scale with other allowances, but the opp. party did not at on the said Memorandum and continuously paid the previous pay scale and allowances. Therefore, the applicants raised their demand for the revised pay scale with allowances from time to time but the opp. party albeit agreed to pay the revised scale of pay and allowances but the opp. party did not pay the same. However, the poor

workmen for the sake of their jobs, continued to work under the opp. party. But despite continuation of the services, the opp. party stopped the regular monthly salaries and allowances to the applicants from the month of July, 2017. In this regards, although the applicants approached the opp. party for getting their hard earned monthly salary with the fooding and house rent allowances for their bare survival but the opp. party did not pay the salaries and allowances on the pretext of their financial crunch.

6. That in the month of March, 2018, the opp. party decided to reconstruct the petrol pump and informed the applicants not to come to duties till the reconstruction of the Petrol Pump is completed. But since the opp. party did not pay the arrear salary from the month of July, 2017 nor paid the house rent and food allowances, therefore, the applicants could not stay in Guwahati till completion of the reconstruction works of the petrol pump, and hence, the applicants visited their home state. But after the applicants visited their home state, the opp. party slowed the reconstruction work and in the meanwhile Covid Lockdown was imposed throughout the country. Due to the Covid pandemic and financial hardships, the applicants could not come to Guwahati to meet the opp. party for their arrear salary nor the opp. party called back the applicants to their duties despite the fact that the opp. party completed the reconstruction works and restarted the operation of the petrol pump. Under such circumstances, it appears that the opp. party terminated the services of the applicants in an illegal manner without any notice and payment of the arrear salaries and allowances.
7. That although the applicants requested the opp. party several times for payment of the arrear salary and allowances from July, 2017, but getting no response, the applicants served a pleader notice dated 05.08.2024 to the opp. party and requested for payment of the arrear salary, but the opp. party has not responded to the said notice of the applicants.
8. On these ground the workmen has prayed for back wages and consequential right and benefit of service.
9. Management / O.P No.1 submitted WS denying the contentions raised by the workman side and resisted their claims by pleading inter- alia that the petition filed by the workman is prima facie misconceived, devoid of justification and jurisdiction and thus liable to be dismissed.
10. It has been further stated by the O.P that there is no employer-employee relationship between the parties as defined under Section

2(f) and the petitioners have failed to show that they were employed in a manner that falls under the purview of the Industrial Disputes Act. In the absence of an employer-employee relationship, the provisions of the act do not apply to the present case.

11. It has been further contended by the Ops that the petitioners were not engaged under any employment terms that would qualify them as employees under the Industrial Disputes Act and that the delay of seven years in filing the present action undermines the merit of the petition and renders it untenable. The doctrine of laches applies in cases where there is undue delay in filing a claim and the opposite party submits that the petitioners by waiting for seven years have effectively forfeited their right to seek legal redress.
12. On these grounds the Ops have denied the veracity of the allegations made in paragraphs 1 to 13 of the present petition and have stated that the claims made against the Ops are false, baseless and lack merit.
13. ***Upon the pleadings of the parties, the learned predecessor framed the following issues for adjudication-***
 - (i) Whether the present case is maintainable in present form and manner?
 - (ii) Whether the opposite party is the owner of petrol pump where the applicants had been working?
 - (iii) Whether the applicant has been illegally retrenched from services without following the procedures of law prescribed under Section 25 F of the ID Act, 1947?
 - (iv) Whether the applicants are entitled to any relief as sought for?
 - (v) To what other relief (s) the parties are entitled?
14. During the course of hearing, both workmen and management adduced oral and documentary evidences in support of their cases.

The workman side adduced evidence of the following witnesses :

- (i) Sri Subodh Narayan Tiwari
- (ii) Sri Tara Chand Sharma

15. The workman has exhibited the following documents:

PW1 Sri Subodh Narayan Tiwari exhibited the following documents:-

- (i) Exhibit-1 is the appointment letter dated 03.08.1989.
- (ii) Exhibit-2,3,4 and 5 are salary statements for the months of 12/2016,01/2017,02/2017 and 04/2017.
- (iii) Exhibit-6 is the Memorandum of Settlement dated 16-12-2016.
- (iv) Exhibit-7 is the pleader demand notice dated 05-08-2024.

PW1 Sri Subodh Narayan Tiwari exhibited the following documents:-

- (i) Exhibit-1 is the appointment letter dated 01-04-2011.
- (ii) Exhibit-2,3,4 and 5 are the salary statements for the months of 12/2016,01/2017,02/2017 and 04/2017.
- (iii) Exhibit-6 is the Memorandum of Settlement dated 16-12-2016.
- (iv) Exhibit-7 is the pleader demand notice dated 05-08-2024.

16. The Management side adduced the evidence of the following witness:-

- (i) Sri Vishal Kumar Sharma

DW1 Sri Vishal Kuamr Sharma exhibited the following documents:-

- (i) Exhibit- A is the certificate of registration of partnership.
- (ii) Exhibit- B is the General Power of Attorney dated 14-05-2024.
- (iii) Exhibit-C is the certificate issued under Section 63 of Bharatiya Sakshya Adhiniyam, 2023.

SUBMISSIONS

14. I have heard learned counsel for both the parties and perused the materials available on record as well as the written argument submitted by the learned counsel for the O.P. I have given my deep thought to the above submissions of the Ld. Counsel for the workman/ applicants as well as Ld. Counsel for the O.P/ Management. Now, let us scrutinize the evidence adduced during the course of hearing in order to appreciate the aforesaid submissions of the Ld. Counsel of both parties and decide the issues involved in this case.

Learned counsel for the workman, during argument has submitted that CPC is not technically applicable for cases pertaining to Industrial Dispute Act. He has further submitted that the concerned workmen of this instant case is still in service but not getting their monitory benefits. It has been further contended that the management has terminated the workmen without following the due procedure of law. He has further pleaded to take consideration of the statements made by him in the written statement while deciding the fate of the suit.

The Ld. Counsel for the management/opposite party, during hearing has submitted that the case of the workman is wholly misconceived, devoid of merit.

The workman has failed to prove employer-employee relationship and non-joinder of Chandmal Sarawgi and Company, the admitted actual employer, as a necessary party to the suit.

He has, further, submitted that the present case is misconceived and is barred by limitation under section 2A sub-section (3) of the Act and the claim being filed over 07 years and 02 months after the alleged date of leaving service is barred by limitation.

It has been, further, contended by the Ld. Counsel for the management that both the witnesses of workman has completely demolished their own case by making categorical admissions, which goes to the root of the matter. On this ground, the management has prayed to dismiss the claim of the workman.

Discussions, decisions and reasons thereof:

15. At the threshold, let us discuss **issue No.1** which is

Whether the case is maintainable in present form and manner?

16. The pleadings of the workman/ applicant reveals that this is a suit filed for full back wages for illegal termination which is permissible under section 2 A (2) of Industrial Disputes Act, 1947 statute provide that this court has jurisdiction to try the suit. Further, the materials available in record also disclose that proper court fee has been paid and the suit does not appears to be barred expressly or impliedly by any law for the time being in

force. So, under above circumstances I am of the considered opinion that the suit is maintainable in present form and manner. Accordingly, the issue is decided in affirmative and in favour of the plaintiff.

ISSUE NO.-2

Whether the opposite party is the owner of petrol pump where the applicants had been working?

17. The workmen in his claim petition has time and again stated that the applicants of this case were workmen in the petrol pump till 2018 which is owned by the Opposite Party.
18. At this juncture, let us scrutinize the evidences along with the cross examination to arrive at a fair decision as to whether the opposite party is the owner of the petrol pump in which the workmen had been working.
19. **PW1 Sri Subodh Narayan Tiwari** during examination he has deposed that he was an employee of Chandmal Sarawgi and Company and Exhibit 1 is the appointment letter which is issued in his name.
20. During the evidence it is admitted by PW1 that there is no employer and employee relationship between him and Bimal Auto Agency and that he has no relation with Bimal Auto Agency and as such he has no claim against the O.P.
21. He has further stated that Exhibit-2 is the photocopy of PF Account No. 1474 which is in the name of Chandmal Sarawgi and Co. (Jalukbari) and he has not taken any steps to call for the original from the said company.
22. He has further stated that he left the service in the month of June 2017 from Chandmal Sarawgi and Co. and since then he has not filed any case against the said company.
23. He has also stated that he has not served any notice to Chandmal Sarawgi and Co. and he is not seeking any relief from Bimal Auto Agency in this case.
24. PW2 Sri Tara Chand Sharma during evidence stated that he does not know what is written in his application as well as in his evidence on affidavit but deposed that the owner told him that the depot would be reconstructed and work is going on since 2017.
25. It has been further stated by him that he was an employee of Chandmal Sarawgi and Co. and there is no employer and

employee relationship between him and Bimal Auto Agency who is the opposite party in this case.

26. It has been further stated that he is receiving everything from Bimal Auto Agency, but to prove the fact neither in his application nor in his evidence on affidavit as well as nor on any documents he has exhibited that he is receiving salary from Bimal Auto Agency.
27. Now come to the evidence of DW1 Sri Vishal Kumar Sharma wherein he has stated that for the last 14-15 years he has been working with Bimal Auto Agency, Adabari as Accountant.
28. He has further stated that he was appointed as attorney by Rohit Sarawgi, Amit Sarawgi and Gaurav Sarawgi and they all brothers and their father's name is Late Narendra Kumar Sarawgi.
29. It has also been stated that the name of Rohit Kumar Sarawgi and Amit Kumar Sarawgi were shown in the Memorandum of Settlement dated 16-12-2016 i.e., Exhibit-6 in this case.
30. It has also been stated that since the applicants of this case were not workers of Bimal Auto Agency so they are not entitled for compensation from Bimal Auto Agency.
31. The workmen have exhibited their respective salary slips and PF records which is in the name of Chandmal Sarawgi and Company.
32. On perusal of evidences in affidavit, cross examinations vis-à-vis the documents exhibited by both the parties it becomes clear that workmen were working under the Chandmal Sarawgi and Company and not under the Opposite parties in this case.
33. It is a well settled provision of law that the employee must prove that there is an employee-employer relationship existed during the period of alleged illegal termination and burden lies upon the workmen to prove this relationship, often needing documentary evidence like appointment letters, salary slips, or direct payment records.
34. In the instant case in hand, the own averments of PW1 and PW2 during their cross examination has reiterated the fact that they were working under Chandmal Sarawgi and Company and not under the present Opposite party of this case. PW1 has clearly stated that he has not served any notice to Chandmal Sarawgi and Co. or made them party in this suit/ case and he is not seeking any relief from Bimal Auto Agency in this case.
35. The Hon'ble Supreme Court in "Workman of Nilgiri Coop. Mkt. Society Ltd. Vs State of Tamil Nadu", reported as AIR 2004 SC 1639 held as under:-

"47. It is a well - settled principle of law that the person who is set up a plea of existence of relationship of employer and employee, the burden would be upon him."

36. In N.C. John Vs Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others [1973 Lab. I.C. 398], the Kerala High Court held :

"The burden of proof being on the workman Jai Prakash of 21 to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

37. In Swapan Das Gupta & Ors. v. The First Labour Court of W.B. (1976 Lab IC 202 (Cal)) it has been held :

"Where a person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person."

The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

38. It is reiterated that the claimant failed to produce any proof of payment of salary or wages to him by the management nor any appointment letter or termination order has been produced. There is no documentary evidence to prove the relationship of employment in this case, merely the oral testimony of the workman is not sufficient to prove the relationship of employer and employee unless proved by documentary evidence since the employee/ workmen admitted that they were appointed.

39. In the present case, there is absolutely no document from which it can be ascertained that the workman has worked or paid any amount by the management herein. There is also no document from which it can be ascertained that the workman herein was on the role of the management. With the above deficiencies in the evidence of the workman herein, it can not be said that onus shifted on the management. Perused all the documents relied by workman in support of his claim and none of these documents prove that the workman was the employee of management as claimed in the statement of claim. The workman further failed to prove that he worked with management for the period claimed by him in statement of claim or for a period of 240 days prior to the alleged termination of his services by the management or that he was regular employee of the management.

40. Therefore considering the above facts and circumstances it can be held that the Opposite party is not the owner of the petrol pump.

The issue is decided accordingly in negative and in favour of the management.

ISSUE NO.3

Whether the applicant has been illegally retrenched from services without following the procedures of law prescribed under Section 25 F of the ID Act, 1947?

41. In view of discussions made in Issue No.2 it can be held that the workmen has failed to bring on record any cogent and convincing documentary evidence to prove that he worked in the management company and neither the testimony of the claimant nor any of the documents relied / produced by him are sufficient to hold that the claimant had worked in the management as regular employee for the said period, as claimed by him in the statement of claim or for a period of 240 days prior to the alleged termination of his services.
42. The workmen has failed to prove on record that he worked in the management company i.e., Bimal Auto Agency for a period of 240 days prior to the alleged date of his termination and also failed to prove that his services were illegally terminated by the management. This court is of the considered opinion that self serving affidavit and the documents, relied upon by the workmen, do not inspire any confidence, so, the workmen are not entitled to get any relief.
43. In view of that this issue is decided against the workmen.

Issue No.4

Whether the applicants are entitled to any relief as sought for?

44. In view of discussions made in Issue No.2 and 3 above this issue is also decided against the workmen.

Issue No.5

45. In view of discussions made in Issue No.2 and 3 this issue is decided against the workmen and in favour of the management.

ORDER

In result the suit is dismissed.

Parties shall bear their own cost.

Judgment is pronounced in an open court, written in separate sheets and enclosed with the case record.

A copy of the award be forwarded to the appropriate government for information and publication in the official gazette.

The judgement is prepared and given under my hand and the seal of this Court and I signed and delivered this judgment on this the 9th day of July, 2026 at Guwahati.

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