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भारत का राजपत्र
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सं. 39] नई दिल्ली, सितम्बर 22—सितम्बर 28, 2013, शनिवार/भाद्र 31—आश्विन 6, 1935
No. 39] NEW DELHI, SEPTEMBER 22—SEPTEMBER 28, 2013, SATURDAY/BHADRA 31—ASVINA 6, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 10 सितम्बर, 2013

का॰आ॰ 1993.—केंद्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं॰ 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए झारखंड राज्य सरकार, गृह विभाग, राँची की अधिसूचना सं॰ 6/सीबीआई-604/2013/2609/दिनांक 25.06.13 द्वारा प्राप्त सहमति से झारखंड राज्य के लोक सेवकों एवं अन्य व्यक्तियों के द्वारा मेसर्स विनि आयरन एवं स्टील उद्योग लिमिटेड के पदाधिकारियों/निदेशकों, श्री नवीन कुमार तुल्स्यान, चार्टर्ड अकाउंटेंट, भारत सरकार के लोक सेवकों एवं अन्य अज्ञात व्यक्तियों के साथ मिलीभगत कर राजहरा नॉर्थ कोयला ब्लॉक (केन्द्रीय और पूर्वी) आबंटन में कथित अनियमितता एवं भ्रष्टाचार से संबंधित भारतीय दंड संहिता की धारा 120 बी सपठित धारा 420 एवं भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 13(1)(डी) सपठित ध ाारा 13(2) के अधीन पंजीकृत सीबीआई मामला सं॰ आरसी 219 2012 (ई) 0012, दिनांक 03.09.2012 में और उक्त मूल अपराधों में तथा उपर्युक्त उल्लिखित अपराधों से संबंधित या उनसे सम्बद्ध अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं और षडयंत्रों तथा उसी संव्यवहार में किए गए या उन्ही तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त झारखंड राज्य के सम्बन्ध में करती है।

[सं॰ 228/33/2013-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 10th September, 2013

S.O. 1993.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act 25 of 1946), the Central Government with the consent of the State

Government of Jharkhand, Home Department, Ranchi *vide* Notification No. 6/CBI-604/2013-2609/25.06.2013, hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment in the whole of State of Jharkhand for investigation in the CBI case No. RC 219 2012 (E) 0012 dt. 03.09.2012, U/s 120 B r/w sec 420 of IPC and Sec 13(2) r/w 13(1) (d) of PC Act, 1988 and substantive offences thereof, regarding alleged irregularities and corruption by Public Servants of State of Jharkhand and Others in regard to allocation of Rajhara North Coal Block (Central & Eastern) in connivance with Office bearers/ Directors of M/s. Vini Iron and Steel Udyog Ltd., Shri Navin Kumar Tulsyan, Chartered Accountant, Public servants of Government of India and others unknown and attempt, abetment and conspiracy in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[No. 228/33/2013-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 10 सितम्बर, 2013

का॰आ॰ 1994.—केंद्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं॰ 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अरूणाचल प्रदेश राज्य सरकार, सतर्कता विभाग, इटानगर की दिनांक 27 जुलाई, 2013 की अधिसूचना सं॰ वीआईजी-04/2010/171 द्वारा प्राप्त सहमति से भारतीय दंड संहिता, 1860 (1946 का अधिनियम सं॰ 45) की धारा 120-बी और 420 तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं॰ 49) की धारा 13 (1)(डी) के साथ पठित धारा 13(2) एवं धारा 15 के अंतर्गत दंडनीय अपराध जो अरूणाचल प्रदेश के पश्चिम कामेग जिला के दिरंग क्षेत्र में ट्रान्स अरूणाचल हाईवे (टीएएच) हेतु भूमि तथा भवनों के अधिग्रहण में हुई विसंगतियों/अवैधता से संबंधित अधिग्रहित भूमि/भवन/पेड़ों के मालिकों को क्षतिपूर्ति के निर्धारण एवं भुगतान से तथा उपरोक्त अपराधों के संबंध में या उनसे सम्बद्ध अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं तथा षडयंत्रों या उन्हीं तथ्यों से उत्पन्न कोई अन्य अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त अरूणाचल प्रदेश राज्य के सम्बन्ध में करती है।

[सं॰ 228/67/2013-एवीडी-II]
राजीव जैन, अवर सचिव

New Delhi, the 10th September, 2013

S.O. 1994.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Arunachal Pradesh, Vigilance Department, Itanagar *vide* Notification No. VIG-04/2010/171 dated 27th July, 2013, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Arunachal Pradesh for investigation of offences punishable under sections 120-B and 420 of the Indian Penal Code, 1860 (Act No. 45 of 1946) and section 13(2) read with 13(1)(d) and section 15 of the Prevention of Corruption Act, 1988 (Act No. 49 of 1988) relating to anomalies/illegalities in acquisition of land and building and in determination and payment of compensation to land owners for land/building/trees acquired for Trans Arunachal Highway (TAH) in the Dirang Region of West Kameng District of Arunachal Pradesh and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in the course of the same transaction of arising out of the same facts.

[No. 228/67/2013-AVD-II]
RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 24 जनवरी, 2013

का॰आ॰ 1995.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथासंशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, वित्त मंत्रालय, वित्तीय सेवाएं विभाग के नियंत्रणाधीन निम्नलिखित बैंकों की शाखाओं को, जिनके 80. से अधिक अधिकारियों/कर्मचारियों ने हिन्दी में कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है।

क्र॰ सं॰	बैंकों के नाम	शाखाओं की संख्या
1.	यूनियन बैंक ऑफ इंडिया	218
2.	इंडियन ओवरसीज बैंक	120
3.	सेंट्रल बैंक ऑफ इंडिया	103
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7.	इंडियन बैंक	12
8.	आंध्रा बैंक	10
	कुल	**547**

[सं॰ 11016/3/2013-हिन्दी]
मिहिर कुमार, निदेशक (रा॰भा॰)

यूनियन बैंक ऑफ इंडिया
राजभाषा कार्यान्वयन प्रभाग, केंद्रीय कार्यालय, मुंबई
राजभाषा नियम 10(4) में अधिसूचनार्थ संस्तुत शाखाएं/कार्यालय

क्षेत्रीय कार्यालय का नाम	क्र॰ सं॰	शाखा/कार्यालय का नाम एवं पता
क्षेत्रीय कार्यालय, दिल्ली दक्षिण	1.	यूनियन बैंक ऑफ इंडिया, पटौदी शाखा, हाउस नं॰ 1, वार्ड नं॰ 6 बाबा आटावला चौक के पास पटौदी हेली मंडी रोड, गुड़गांव 122504
	2.	यूनियन बैंक ऑफ इंडिया भोंडसी शाखा गांव भोंडसी, जिला गुड़गांव, पिन 122102
	3.	यूनियन बैंक ऑफ इंडिया उजीना शाखा डाक उजीना, जिला मेवात, हरियाणा
क्षेत्रीय कार्यालय, दिल्ली उत्तर	4.	यूनियन बैंक ऑफ इंडिया भोरगढ़ शाखा हाउस नं॰ 7/2, रेलवे क्रासिंग नरेला, दिल्ली, पिन 110040
	5.	यूनियन बैंक ऑफ इंडिया गोकलपुर शाखा ए-51, गोकलपुर, डाकघर गोकलपुर नई दिल्ली पिन 110094
	6.	यूनियन बैंक ऑफ इंडिया यूएलपी पश्चिम विहार शाखा बी 2/15, पश्चिम विहार दिल्ली-110063
क्षेत्रीय कार्यालय, जयपुर	7.	यूनियन बैंक ऑफ इंडिया दूनी शाखा पंचायत भवन, ग्राम व पोस्ट दूनी तहसील देवली, जिला टोंक राजस्थान, पिनकोड 304 802
	8.	यूनियन बैंक ऑफ इंडिया नीमराना शाखा ग्राम व पोस्ट नीमराना, तहसील बहरोड़, जिला अलवर, राजस्थान, पिन 301705
	9.	यूनियन बैंक ऑफ इंडिया लीड़ी शाखा ग्राम व पोस्ट लीड़ी, तहसील पीसांगन जिला अजमेर, राजस्थान, पिन 305203
	10.	यूनियन बैंक ऑफ इंडिया बाघसूरी शाखा ग्राम व पोस्ट बाघसूरी तहसील नसीराबाद, जिला अजमेर राजस्थान, पिन 305401
क्षेत्रीय कार्यालय, करनाल	11.	यूनियन बैंक ऑफ इंडिया, यूनियन लोन पोइंट फरीदाबाद शाखा एससीओ-60, हुडा मार्केट सेक्टर 7, फरीदाबाद, जिला फरीदाबाद 121001, हरियाणा
	12.	यूनियन बैंक ऑफ इंडिया, सैक्टर 3 करनाल शाखा एससीओ 16, सैक्टर 3, करनाल जिला करनाल 132001 (हरियाणा)
क्षेत्रीय कार्यालय, आजमगढ़	13.	यूनियन बैंक ऑफ इंडिया समेदा (वित्तीय समावेशन) शाखा ग्राम व पोस्ट समेदा, जिला आजमगढ़ पिन कोड 276128
	14.	यूनिय बैंक ऑफ इंडिया देवारा जदीद (वित्तीय समावेशन) शाखा ग्राम व पोस्ट देवारा जदीद, वाया महाराजगंज , जिला आजमगढ़, पिन कोड 276137
	15.	यूनियन बैंक ऑफ इंडिया माहुल शाखा ग्राम व पोस्ट माहुल, जिला आजमगढ़ पिन कोड 223225
	16.	यूनियन बैंक ऑफ इंडिया टाण्डा शाखा ग्राम व पोस्ट टाण्डा जिला अम्बेडकर नगर, पिन कोड 224190
	17.	यूनियन बैंक ऑफ इंडिया देवगांव शाखा ग्राम व पोस्ट देवगांव, जिला आजमगढ़ पिन कोड 276202
	18.	यूनियन बैंक ऑफ इंडिया मित्तूपुर शाखा ग्राम व पोस्ट मित्तूपुर, ब्लाक जहानागंज जिला आजमगढ़, पिन कोड 276131
	19.	यूनियन बैंक ऑफ इंडिया कोहरा शाखा ग्राम व पोस्ट कोहडा, ब्लाक पवई जिला आजमगढ़, पिन कोड 276288
	20.	यूनियन बैंक ऑफ इंडिया जोकहरा शाखा ग्राम व पोस्ट जोकहरा, ब्लाक हरैया जिला आजमगढ़, पिन कोड 276136
	21.	यूनियन बैंक ऑफ इंडिया भखरा शाखा ग्राम व पोस्ट भखरा, ब्लाक फूलपुर जिला आजमगढ़, पिन कोड 223226

क्षेत्रीय कार्यालय का नाम	क्र॰ सं॰	शाखा/कार्यालय का नाम एवं पता
	22	यूनियन बैंक ऑफ इंडिया ठठेरी शाखा मोहल्ला नं॰ 10, मेन रोड, सरायमीर निजामाबाद, जिला आजमगढ़, 276305
क्षेत्रीय कार्यालय, गोरखपुर	23	यूनियन बैंक ऑफ इंडिया बरहज शाखा स्टेशन रोड, मु॰पो॰ बरहज, जिला देवरिया पिन 274 601, उत्तर प्रदेश
	24	यूनियन बैंक ऑफ इंडिया हरैया शाखा सम्राट नगर, मुख्य बाजार मु पोस्ट हरैया, जिला बस्ती 272 155 उ॰ प्र॰
क्षेत्रीय कार्यालय, पटना	25	यूनियन बैंक ऑफ इंडिया बक्सर शाखा ठठेरी बाजार, बक्सर जिला रोहतास, बिहार पिनकोड, 821115
	26	यूनियन बैंक ऑफ इंडिया सासाराम शाखा निकट साहू टाकीज, जी॰टी॰ रोड, सासाराम जिला सासाराम, बिहार पिन-802101
	27	यूनियन बैंक ऑफ इंडिया सबौरा रोड शाखा भागलपुर तिलका मांझी हाटिया रोड, जिला-भागलपुर, बिहार पिन-812001
	28	यूनियन बैंक ऑफ इंडिया मधुबनी शाखा निकट प्रधान डाकघर, मुख्य मार्ग, जिला मधुबनी, बिहार पिन कोड-847227
	29	यूनियन बैंक ऑफ इंडिया वि॰ समावेशन शाखा धुतौली मो॰+पो॰ धुतौली, निकट मालपा चौक, वाया चौथम, जिला-खगड़िया, बिहार पिनकोड-851201
	30	यूनियन बैंक ऑफ इंडिया वि॰ समावेशन शाखा अजनौल ग्राम भटगामा, मंसूर चक रोड, पोस्ट दलसिंह सराय, जिला समस्तीपुर, बिहार पिनकोड-848114
	31	यूनियन बैंक ऑफ इंडिया वित्तीय समावेशन शाखा शंभुपट्टी ग्राम व पोस्ट शंभुपट्टी, जिला-समस्तीपुर, बिहार पिनकोड-848129
	32	यूनियन बैंक ऑफ इंडिया वि॰ समावेशन शाखा बिशुनपुर हरनारायण ग्राम बसौली हिम्मत सिंह, पोस्ट माहपुर जिला मुजफ्फरपुर, बिहार, पिनकोड-843103
	33	यूनियन बैंक ऑफ इंडिया वि॰ समावेशन शाखा लाभगांव ग्रा॰+पो॰ लाभगांव, जिला-खगड़िया, बिहार पिन कोड-851204
	34	यूनियन बैंक ऑफ इंडिया वि॰ समावेशन शाखा पितौझिया ग्राम व पोस्ट पितौझिया, जिला-खगड़िया, बिहार पिनकोड-843117
क्षेत्रीय कार्यालय, भोपाल	35	यूनियन बैंक ऑफ इंडिया बरेली शाखा 1, भूतड़ा कॉलौनी, जे॰जे॰ रोड, बरेली रायसेन (म॰ प्र॰)
क्षेत्रीय कार्यालय, इंदौर	36	यूनियन बैंक ऑफ इंडिया नानाखेडा शाख 13/4-सी ब्लॉक, महाकाल वाणिज्य केन्द्र वीआईपी रोड, नानाखेडा उज्जैन (म॰ प्र॰) 456010
	37	यूनियन बैंक ऑफ इंडिया विशेषीकृत वित्तीय समावेशन शाखा बडा बांगडदा पोस्ट: पालाखेडी जिला इन्दौर (म॰प्र॰) 453112
	38	यूनियन बैंक ऑफ इंडिया पिपल्याकुमार शाखा एस॰एस॰ आंगन 90-91 दीप पेलेस कॉलोनी, ग्राम: पिपल्याकुमार जिला: इंदौर (म॰प्र॰) 452010
क्षेत्रीय कार्यालय रायपुर	39	यूनियन बैंक ऑफ इंडिया बीजापुर शाखा मेन रोड (एचपी पेट्रोल पंप के सामने) बीजापुर जिला बीजापुर छत्तीसगढ़ 494444
	40	यूनियन बैंक ऑफ इंडिया दंतेवाड़ा शाखा, मां दंतेश्वरी मंदिर के पास मेन रोड, दंतेवाड़ा जिला दंतेवाड़ा (छ॰ ग॰) 494449
	41	यूनियन बैंक ऑफ इंडिया जशपुर नगर शाखा पुराना महल, बी॰ एस॰ मार्केट मेन रोड, जशपुर (छ॰ ग॰) 496331

क्षेत्रीय कार्यालय का नाम	क्र॰ सं॰	शाखा/कार्यालय का नाम एवं पता
	42	यूनियन बैंक ऑफ इंडिया बैंकठपुर शाखा बैसागर पारे, बैंक ऑफ इंडिया के पीछे बैंकठपुर, जिला कोरिया (छ॰ ग॰) 497625
	43	यूनियन बैंक ऑफ इंडिया वित्तीय समावेशन शाखा डुमरतराई, मेन रोड डुमरतराई, जिला रायपुर (छ॰ ग॰)
	44	यूनियन बैंक ऑफ इंडिया नारायणपुर शाखा मेन रोड, जयस्तंभ के पास, नारायणपुर (छ॰ग॰) 494661
क्षेत्रीय कार्यालय, रीवा	45	यूनियन बैंक ऑफ इंडिया अमरपाटन शाखा, 128/2 नगर पंचायत रोड, सुभाष चौक अमरपाटन, जिला सतना, म॰प्र॰ पिन 485775
	46	यूनियन बैंक ऑफ इंडिया पन्ना शाखा, 13 शासकीय गृह निर्माण संस्थान के पास, बीटीआई रोड, जिला पन्ना, म॰ प्र॰ पिन 488001
	47	यूनियन बैंक ऑफ इंडिया अनूपपुर शाखा, वार्ड, नं॰ 07, अमरकंटक तिराहा, अनूपपुर म॰प्र॰ पिन 484224
	48	यूनियन बैंक ऑफ इंडिया ट्रांसपोर्टनगर सतना शाखा 2/1, ट्रांसपोर्ट नगर सतना, रीवा रोड जिला सतना म॰ प्र॰ पिन 485001
	49	यूनियन बैंक ऑफ इंडिया अतरेला शाखा, ग्राम पोस्ट अतरैला, त्यौथर, जिला रीवा म॰प्र॰–485001
	50	यूनियन बैंक ऑफ इंडिया रहट शाखा, 241 ग्राम रहट, पोस्ट रहट रीवा पिन 484446
	51	यूनियन बैंक ऑफ इंडिया तेंदुआ शाखा, रीवा रोड ग्राम तेंदुआ, पोस्ट पदखुरी जिला सीधी पिन 486669
	52	यूनियन बैंक ऑफ इंडिया बगैया शाखा, पंचायत बिल्डिंग, रेस्ट हाउस, ग्राम बगैया, तहसील चितरंगी, जिला सिंगरौली पिन 486001
क्षेत्रीय कार्यालय, इलाहाबाद	53	यूनियन बैंक ऑफ इंडिया कुरमैचा शाखा, जी॰टी॰ रोड, कुरमैचा जिला–संत रविदास नगर उत्तर प्रदेश पिन 211003
	54	यूनियन बैंक ऑफ इंडिया बरौत शाखा पोस्ट–बरौत, ब्लाक–इंडिया जिला इलाहाबाद उ॰ प्र॰ पिन 221502
	55	यूनियन बैंक ऑफ इंडिया छत्रपति शाहूजी महाराज नगर, गौरीगंत शाखा जिला–छत्रपति शाहूजी महाराज नगर (अमेठी) उ॰प्र॰ पिन 227409
	56	यूनियन बैंक ऑफ इंडिया बीना शाखा, नार्दल कोल फील्ड्स लि॰ बीना प्रोजेक्ट, जिला–सोनभद्र, उ॰प्र॰ पिन 231220
	57	यूनियन बैंक ऑफ इंडिया शांतिपुरम शाखा, जी–2, गोहरी रोड, शांतिपुरम, फाफामऊ जिला इलाहाबाद, उ॰प्र॰ पिन 211013
	58	यूनियन बैंक ऑफ इंडिया अगियौना शाखा, रिजवी इंस्टीट्यूट ऑफ इंजिनियरिंग एण्ड टेक्नालाजी, अगियौना, मंझनपुर, जिला–कौशाम्बी उ॰प्र॰ 2212207
	59	यूनियन बैंक ऑफ इंडिया जमुनीपुर अठगवां शाखा, पोस्ट–मोड़ जिला संत रविदास नगर पिन 221406
	60	यूनियन बैंक ऑफ इंडिया कौलापुर शाखा, राजपूत ढाबा के पास पोस्ट–गोपीगंज जिला संत रविदास नगर उ॰ प्र॰ पिन 221303
	61	यूनियन बैंक ऑफ इंडिया वीरमपुर शाखा, ब्लाक–अभौली जिला संत रविदास नगर उ॰ प्र॰ पिन 221308

क्षेत्रीय कार्यालय का नाम	क्र सं॰	शाखा/कार्यालय का नाम एवं पता
	62	यूनियन बैंक ऑफ इंडिया भुर्की शाखा विकास भवन, जिला हेडक्वार्टर, पोस्ट–ज्ञानपुर, जिला संत रविदास नगर–उ॰प्र॰ पिन 221304
	63	यूनियन बैंक ऑफ इंडिया नटवाँ औरंगाबाद शाखा पोस्ट–खमरिया जिला संत रविदास नगर, उ॰ प्र॰ पिन–221306
	64	यूनियन बैंक ऑफ इंडिया महजूदा बाजार शाखा पोस्ट भोरी जिला–संत रविदास नगर उ॰प्र॰ पिन–221404
क्षेत्रीय कार्यालय, कानपुर	65	यूनियन बैंक ऑफ इंडिया गुलामऊ (वित्तीय समावेशन) शाखा, ग्राम व पोस्ट गुलामऊ, ब्लॉक बावन, जिला हरदोई, पिनकोड 241001
क्षेत्रीय कार्यालय, लखनऊ	66	यूनियन बैंक ऑफ इंडिया भिंगा शाखा मोहल्ला टंडवा, पोस्ट भिंगा, पिन 271831
	67	यूनियन बैंक ऑफ इंडिया सेक्टर क्यू शाखा सरस्वती विद्या मंदिर, सेक्टर क्यू अलीगंज, लखनऊ–226024
	68	यूनियन बैंक ऑफ इंडिया यू पी स्टेट एग्रो शाखा यू पी एग्रो इंडिस्ट्रियल कार्पोरेशन विधान सभा मार्ग, लखनऊ–226001
	69	यूनियन बैंक ऑफ इंडिया यू पी स्टेट शुगर कार्पोरेशन शाखा यू पी स्टेट शुगर कार्पोरेशन, विपिन खंड, गोमती नगर, लखनऊ–226010
	70	यूनियन बैंक ऑफ इंडिया 2 बटालियन पी ए सी सीतापुर शाखा पी ए सी लखनऊ रोड, सीतापुर–261001
	71	यूनियन बैंक ऑफ इंडिया लहरपुर शाखा रियाज़ मार्केट, मेन माजाशाह क्रासिंग, लहरपुर, सीतापुर–260135
	72	यूनियन बैंक ऑफ इंडिया सिधौली शाखा सुमंडपम मैरेज हाल, सिधौली, सीतापुर
	73.	यूनियन बैंक ऑफ इंडिया, आशियाना शाखा, एम 1 ए, सेक्टर आई, आशियाना, लखनऊ–226012
	74.	यूनियन बैंक ऑफ इंडिया, सेक्टर ओ शाखा, सिटी मांटेसरी स्कूल, सेक्टर ओ, अलीगंज, लखनऊ–226024
	75.	यूनियन बैंक ऑफ इंडिया विभूती खंड शाखा, विभूती खंड, मंत्री आवास के पास, गोमती नगर, लखनऊ–226010
	76.	यूनियन बैंक ऑफ इंडिया, कुसमाहा शाखा, ग्राम व पोस्ट कुसमाहा, फैजाबाद, अकबरपुर रोड, फैजाबाद–224135
	77.	यूनियन बैंक ऑफ इंडिया, 32 बटालियन, पी ए सी, लखनऊ शाखा, पी ए सी आलमबाग, लखनऊ–226005
	78.	यूनियन बैंक ऑफ इंडिया, हरदोईया शाखा, सी पी एल इंटर कालेज, हरदोईया, आदमपुर, लखनऊ
	79.	यूनियन बैंक ऑफ इंडिया, मौरा शाखा, सैंथा क्रासिंग, दुबग्गा माल रोड, चरक इंस्टिट्यूट, लखनऊ–227107
	80.	यूनियन बैंक ऑफ इंडिया, कुचेरा शाखा, कुचेरा बाजार, फैजाबाद, जगदीशपुर रोड, जिला फैजाबाद–224158
क्षेत्रीय कार्यालय, देहरादून	81	यूनियन बैंक ऑफ इंडिया, यूनियन लोन पॉइंट शाखा, इंडस्ट्रीयल एरिया, इंद्रेश अस्पताल के पास, पटेल नगर, उत्तराखंड–248001
	82.	यूनियन बैंक ऑफ इंडिया, बड़ासी ग्रांट शाखा, पोस्ट बड़ासी ग्रांट, ब्लाक रायपुर, तहसील देहरादून सदर, जिला देहरादून, पिन–248008
	83.	यूनियन बैंक ऑफ इंडिया, घनसाली शाखा, शाह भवन, चिमयाला रोड, जिला टिहरी गढ़वाल, उत्तराखंड

क्षेत्रीय कार्यालय का नाम	क्र सं॰	शाखा/कार्यालय का नाम एवं पता
क्षेत्रीय कार्यालय, जबलपुर	84.	यूनियन बैंक ऑफ इंडिया, टीएफआरआई शाखा, ग्राम नीमखेडा, डाक आरएएफआरसी मंडला मार्ग, जबलपुर-482021
	85.	यूनियन बैंक ऑफ इंडिया, वारासिवनी शाखा, कटंगी रोड, वारा सिवनी-481331
	86.	यूनियन बैंक ऑफ इंडिया, तेवर शाखा, ग्राम व डाक तेवर, भेंडाघाट मार्ग, जबलपुर-482001
क्षेत्रीय कार्यालय, रांची	87.	यूनियन बैंक ऑफ इंडिया, कांडरा शाखा, गुरुगोविंद सिंह एजुकेशन सोसायटीज, टेक्नीकल कैंपस, कांडरा, डाक चास, बोकारो, जिला बोकारो, पिन: 827004
	88.	यूनियन बैंक ऑफ इंडिया, जामताडा शाखा, 204, न्यू टाऊन, जामताडा, जिला जामताडा, झारखंड, पिन 815351
	89.	यूनियन बैंक ऑफ इंडिया, चास शाखा 564150 राजलक्ष्मी टावर बायपास रोड, चास डाक-चास, बोकारो, जिला-बोकारो-पिन: 827013
	90.	यूनियन बैंक ऑफ इंडिया, चंदवा शाखा 564834 मेन रोड चंदवा जिला-लातेहार, झारखण्ड पिन: 829 203
	91.	यूनियन बैंक ऑफ इंडिया, चतरा शाखा-564567, सुशीला कॉम्प्लेक्स, गुदड़ी बाजार, चतरा गया रोड, जिला-चतरा, पिन: 825401
	92.	यूनियन बैंक ऑफ इंडिया, यूएलपी जमशेदपुरा शाखा 563163 पहली मंजिल, कमानी सेंटर बिष्टुपुर, जमशेदपुर, जिला-पूर्वी सिंघभूम, झारखण्ड-831001
क्षेत्रीय कार्यालय, गाजीपुर	93.	यूनियन बैंक ऑफ इंडिया, करहिया शाखा, ग्राम व पोस्ट पखनपुरा, मछटी, जिला गाजीपुर पिन कोड: 233227
	94.	यूनियन बैंक ऑफ इंडिया, युवराजपुर शाखा, ग्राम व पोस्ट युवराजपुर, ब्लाक रेवतीपुर, तहसील सदर, जिला गाजीपुर, पिन: 232332
	95.	यूनियन बैंक ऑफ इंडिया, कामुपुर शाखा, ग्राम व पोस्ट कामुपुर, ब्लाक बरछावर, तहसील मोहम्मदाबाद, जिला गाजीपुर, पिन: 232229
	96.	यूनियन बैंक ऑफ इंडिया, मतसा शाखा, ग्राम व पोस्ट जीवपुर, ब्लाक जमनिया, तहसील मोहम्मदाबाद, जिला गाजीपुर, पिन: 232340
	97.	यूनियन बैंक ऑफ इंडिया, कुचौरा उपरवार शाखा, ग्राम व पोस्ट कुचौरा उपरवार, ब्लाक करंडा, तहसील सदर, जिला गाजीपुर, पिन: 232224
	98.	यूनियन बैंक ऑफ इंडिया, नारी पचदेवारा शाखा, ग्राम व पोस्ट नारी पचदेवारा, ब्लाक देवकली, तहसील सदर, जिला गाजीपुर, पिन: 233002
	99.	यूनियन बैंक ऑफ इंडिया, अरखपुर शाखा, ग्राम व पोस्ट अरखपुर, ब्लॉक बिरनों, तहसील सदर, जिला गाजीपुर, पिन 233005
	100.	यूनियन बैंक ऑफ इंडिया, सौरी शाखा, ग्राम व पोस्ट सौरी, ब्लाक मनिहारी, तहसील सैदपुर, जिला गाजीपुर, पिन: कोड 275205
	101.	यूनियन बैंक ऑफ इंडिया, पद्मपुर रामराई शाखा, ग्राम व पोस्ट पद्मपुर रामराई, ब्लाक जखनिया, तहसील जखनिया, जिला गाजीपुर, पिन: 275203
	102.	यूनियन बैंक ऑफ इंडिया, सरहुला शाखा, ग्राम व पोस्ट सरहुला, ब्लाक रेवतीपुर, तहसील जखनिया, जिला गाजीपुर, पिन: 232326

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	103.	यूनियन बैंक ऑफ इंडिया, बीरपुर शाखा, ग्राम व पोस्ट बीरपुर, ब्लाक भंवरकोल, जिला गाजीपुर, पिन: 233231
क्षेत्रीय कार्यालय, आगरा	104.	यूनियन बैंक ऑफ इंडिया, बी सी एस शाखा, 4 पश्चिम, गोविंदनगर, भारतीय चर्म उद्योग संघ, साकेत, न्यू शाहगंज, जिला आगरा, उ॰ प्र॰–282010
	105.	यूनियन बैंक ऑफ इंडिया, शहीदनगर आगरा शाखा, राजपुर चुंगी के समीप, शमशाबाद रोड, आगरा उ॰ प्र॰–282007
	106.	यूनियन बैंक ऑफ इंडिया, विकासभवन, डबरई शाखा, नवीन कलेक्ट्रेट परिसर, विकास भवन, शिकोहाबाद मार्ग, डबरई जिला फिरोजाबाद, उ॰ प्र॰
	107.	यूनियन बैंक ऑफ इंडिया, कोसीकलां शाखा, नन्दगांव रोड, रेलवे स्टेशन के सामने, मथुरा, उ॰ प्र॰–281403
	108.	यूनियन बैंक ऑफ इंडिया, चंदौसी शाखा, चंदौसी बाल विद्या मंदिर, मुंसिफमार्ग, भीमनगर, उ॰ प्र॰–202412
	109.	यूनियन बैंक ऑफ इंडिया, एफ आई पैठा शाखा, पैठा ब्लाक, गोवर्धन, जिला मथुरा, उ॰ प्र॰ 281502
	110.	यूनियन बैंक ऑफ इंडिया, सेवा शाखा आगरा, प्रथमतल, फ्रेन्डसवासन प्लाजा, संजय प्लेस, आगरा, उ॰ प्र॰ 282002
	111.	यूनियन बैंक ऑफ इंडिया, शिकोहाबाद शाखा, रुकनपुरा, आदर्श सिनेमा के सामने, मैनपुरी रोड, जिला फिरोजाबाद, उ॰प्र॰ 205135
क्षेत्रीय कार्यालय, अहमदाबाद	112.	यूनियन बैंक ऑफ इंडिया, नागवासण शाखा, पोस्ट नागवसण, तालुका सिद्धपुर, जिला पाटन 384 151, राज्य गुजरात
	113.	यूनियन बैंक ऑफ इंडिया, कुजाड शाखा, दातार चैंबर के सामने, कठलाल हाई वे, कुजाड, तालुका: दसक्रोई, जिला: अहमदाबाद, राज्य: गुजरात, पिन: 382 430
क्षेत्रीय कार्यालय, राजकोट	114.	यूनियन बैंक ऑफ इंडिया, राजदा शापिंग सेंटर, जोधपुर गेट, जमखंभालिया, जिला जामनगर, पिन: 361305
	115.	यूनियन बैंक ऑफ इंडिया, गोंडल शाखा, शॉप नं॰ 37, कैलाश काम्प्लेक्स ए विंग, गुंदाला गेट के पास, गुंदाला पेट्रोल पंप के सामने, गोंडल, जिला राजकोट, गुजरात, पिन–360311
	116.	यूनियन बैंक ऑफ इंडिया, जसदण शाखा गीता नगर, खादी भवन के पास, खानपुर रोड, जसदण जिला राजकोट, गुजरात–360050
	117.	यूनियन बैंक ऑफ इंडिया, पिपलवा शाखा (वित्तीय समावेशन शाखा) बस स्टैंड के पास, पोस्ट पिपलवा, तलाला, जिला–जूनागढ़, गुजरात
	118.	यूनियन बैंक ऑफ इंडिया, कडुका (वित्तीय समावेशन शाखा) नवरात्रि चौक, गांव एवं पोस्ट–कडुका, विया–लीलपुर जिला राजकोट, पिन–360050
	119.	यूनियन बैंक ऑफ इंडिया, रामपरवेकरा शाखा, श्री वेकरा स्वामीनारायण मंदिर, गांव–रामपरवेकरा, जिला–कच्छ 370445
क्षेत्रीय कार्यालय, नासिक	120	यूनियन बैंक ऑफ इंडिया ब्रह्मणवाडा (वित्तीय समावेशन शाखा) तहसील सिन्नर (वाया नासिक रोड), जिला नासिक, महाराष्ट्र –422 109
	121	यूनियन बैंक ऑफ इंडिया, वाणी (बुदरुक) शाखा, दुकान संख्या 23 से 25, 40 एवं 41, सुमन, हाईट्स, फेज–II कोणार्क विहार, फरांडे नगर, वाणी (बुदरुक) तहसील एवं जिला : नांदेड, महाराष्ट्र, पिन: 431 605

क्षेत्रीय कार्यालय का नाम	क्र॰ सं॰	शाखा/कार्यालय का नाम एवं पता
	122	यूनियन बैंक ऑफ इंडिया रावेर शाखा, शाप नं॰ 101, 102, 103, 104 एवं 115 छोरिया मार्केट, रावेर, तहसील रावेर जिला जलगांव
क्षेत्रीय कार्यालय कोल्हापुर	123	यूनियन बैंक ऑफ इंडिया महाद्वार रोड, कोल्हापुर शाखा बिनखांबी गणेश मंदिर, महाद्वार रोड, कोल्हापुर 416 412
	124	यूनियन बैंक ऑफ इंडिया मोहोल शाखा पोस्ट-मोहोल, तालुका- मोहोल, जिला सोलापुर, पिन 413 307
	125	यूनियन बैंक ऑफ इंडिया मार्केट यार्ड, सांगली शाखा वसंतदादा मार्केट के सामने, मार्केट यार्ड, सांगली, जिला सांगली (महाराष्ट्र) पिन-416 416
	126	यूनियन बैंक ऑफ इंडिया केडगांव शाखा मकान नं॰ 410, गेट नं॰ 78, ता करमाला, जिला सोलापुर, पिन 413 202
क्षेत्रीय कार्यालय सूरत	127	यूनियन बैंक ऑफ इंडिया विशेषीकृत वित्तीय समावेशनप शाखा पोस्ट मांडव खडक, तालुका चिखली, जिला नवसारी, पिन 396 060
क्षेत्रीय कार्यालय मुंबई पश्चिम	128	यूनियन बैंक ऑफ इंडिया नालासोपारा पूर्व शाखा, शॉप नं॰ 4, 5, 6 जय विजय नगर के सामने, 100 फीट वसई नालासोपारा लिंक रोड, नालासोपारा (पूर्व), जिला-ठाणे 401 209
क्षेत्रीय कार्यालय मुंबई दक्षिण	129	यूनियन बैंक ऑफ इंडिया बांद्रा (पूर्व) शाखा रेणुका को॰आ॰ हाउसिंग सोसायटी लिमिटेड़ गुरूनानक अस्पताल के पास, बांद्रा (पूर्व), मुंबई-400 051
क्षेत्रीय कार्यलय मुंबई उत्तर	130	यूनियन बैंक ऑफ इंडिया वित्तीय समावेशन शाखा कवाड खुर्द, पोस्ट-आनगांव, भिवंडी वाडा रोद, तालुका भिवंडी, पिन 421 302
	131	यूनियन बैंक ऑफ इंडिया यूनियन लोन प्वांइट खारघर शॉप नं॰ 1-4, प्लॉट नं॰ 17-18, डेफोडिल्स, सेक्टर-19, खारघर, नवी मुंबई-410 210
	132	यूनियन बैंक ऑफ इंडिया केलवणे (वित्तीय समावेशन शाखा) एच नं॰ 722, पोस्ट-केलवणे, तालुका-पनवेल, जिला रायगढ़, पिन 410 206
	133	यूनियन बैंक ऑफ इंडिया सानपाडा शाखा शॉप नं॰ 14-15, अखुरथ को॰ऑप॰हौ॰सो॰ प्लॉट नं॰ 11, सेक्टर-14, पा, बीच रोड के पास वाशी सानपाडा, नवी मुंबई 400 705
	134	यूनियन बैंक ऑफ इंडिया लुईसवाडी शाखा रत्ना उमेद सेसिडेन्सी, उमेद नगर, पाईप लाईन रोड, लुईसवाडी, ठाणे (वेस्ट) पिन-400 604
	135	यूनियन बैंक ऑफ इंडिया स्टेशन रोड चेम्बूर (पश्चिम) शाखा स्वास्तिक प्राईड, तल मंजिल, डी॰के॰ सांडु मार्ग, चेंबूर (पश्चिम) मुंबई 400 071
	136	यूनियन बैंक ऑफ इंडिया रेलवे स्टेशन ठाणे (पश्चिम) शाखा गाला क्रं॰ 15, 16, तल मंजिल, पेराडाइज हाइट्स शिवाजी पथ, ठाणे पश्चिम 400 602
	137	यूनियन बैंक ऑफ इंडिया न्यू पनवेल शाखा गाला नं॰ 16 से 19, श्री दर्शन को॰ऑप॰हौ॰सो॰ सेक्टर 9, प्लॉट नं॰ 34 खांडा कॉलोनी, न्यू पनवेल (पश्चिम), नवी मुंबई 410 206
क्षेत्रीय कार्यालय नागपुर	138	यूनियन बैंक ऑफ इंडिया कान्द्री कन्हान शाखा पोस्ट कान्द्री कन्हान, तालुका पारशिवनी नागपुर, जबलपुर महामार्ग, जिला नागपुर 441 401
	139	यूनियन बैंक ऑफ इंडिया टेंभुरखेड़ा शाखा (वित्तीय समावेशन) पोस्ट टेंभुरखेड़ा, तालुका वरुड जिला अमरावती 444 911
क्षेत्रीय कार्यालय बडौदा	140	यूनियन बैंक ऑफ इंडिया एमआइसीआर सीपीसी आणंद शाखा समाशोधन गृह एवं माइकर सीपीसी केन्द्र शांतिनाथ कॉम्प्लेक्स, मेफेयर रोड, यूनियन बैंक के सामने, आणंद जिला आणंद, गुजरात 385 001

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	141	यूनियन बैंक ऑफ इंडिया मंजूसर शाखा 115/116, जीआईडीसी सावली गांव मंजूसर, गुजरात 385 001
	142	यूनियन बैंक ऑफ इंडिया कारेलीबाग शाखा सृष्टि एवेन्यू, शॉप नं॰ 1-4 आम्रपाली काम्पलेक्स के सामने पानी की टांकी रोड, पो ऑ कारेलीबाग जिला वडोदरा
	143	यूनियन बैंक ऑफ इंडिया छोटा उदयपुर शाखा हाउस नं॰ 5/704, विकास पथ, कुसुम सागर के पास, छोटा उदेयपुर, जिला बडौदा 391 165
	144	यूनियन बैंक ऑफ इंडिया नरसंडा शाखा पोस्ट नरसंडा तालुका नडियाद, खेडा जिला गुजरात 387 345
	145	यूनियन बैंक ऑफ इंडिया मांजलपुर शाखा भुतल, हंसा पार्टी प्लांट व्रजधाम मंदिर रोड, मांजलपुर, जिला बडौदा 390 011
	146	यूनियन बैंक ऑफ इंडिया लतीपुरा शाखा, पोस्ट लतीपुरा तालुका पादरा, जिला बडौदा, बडौदा 391 440
	147	यूनियन बैंक ऑफ इंडिया सांसरोद शाखा, कमल सैयद आवास, ब्राह्मण फलिये के पास पो॰ ओ॰ सांसरोद तालुका करजन जिला बडौदा 392 220 गुजरात
क्षेत्रीय कार्यालय बेलगाम	148	यूनियन बैंक ऑफ इंडिया एम॰आई॰सी॰आर॰ शाखा, बैंकर्स क्लियरिंग हाउस 1049/बी 2, खानापुर रोड, (रिलायंस पेट्रोलियम के सामने), तिलकवाड़ी जिला बेलगाम (कर्नाटक) पिन 590 006
क्षेत्रीय कार्यालय हैदराबाद	149	यूनियन बैंक ऑफ इंडिया सर्वे ऑफ इंडिया शाखा सर्वे ऑफ इंडिया काम्पलेक्स उप्पल रोड हैदराबाद (आं॰ प्र॰) - 500 039
	150	यूनियन बैंक ऑफ इंडिया गायत्रीनगर शाखा प्लाट नं॰ 3, गायत्रीनगर रोड गायत्रीनगर, कर्मनघाट हैदराबाद (आं॰प्र॰) - 500 097
	151	यूनियन बैंक ऑफ इंडिया रुद्रारम शाखा गीतम विश्वविद्यालय कैम्पस, रुद्रारम गांव, मंडल-पटानचेरू, जिला-मेदक (आंध्र प्रदेश) पिन-502 329
	152	यूनियन बैंक ऑफ इंडिया अंबाला शाखा, मकान नं॰ 6-4/3, श्रीरामुलापल्ली, ग्राम-अंबाला, मंडल-कमलापुर, जिला-करीमनगर, आंध्र प्रदेश-505 102
	153	यूनियन बैंक ऑफ इंडिया अन्नारम शाखा मकान नं॰ 4-67, मैं रोड, ग्राम पंचायत के सामने, ग्राम-अननरम, मंडल-मांकोंडुर, जिला-करीमनगर, आंध्र प्रदेश-505 469
क्षेत्रीय कार्यालय विजयवाडा	154	यूनियन बैंक ऑफ इंडिया मंगलगिरी शाखा क्र॰ 1-643, पहला तल गौतम बुद्ध रोड (मेईन रोड), मंगलगिरी, गुंटूर जिला, आं॰ प्र॰ पिन 522 503
	155	यूनियन बैंक ऑफ इंडिया मेडेपल्ली शाखा डोर क्र॰ 2-39, हनुमान मंदिर के निकट मेडेपल्ली 507158 मुंदिगोंडा मंडल, खम्मम जिला, आंध्र प्रदेश
	156	यूनियन बैंक ऑफ इंडिया बसवपुरम शाखा नं॰ 01-22, कुडुमूरु बाजार बसवपुरम, 507318, चिंतकानी मंडल खम्मम जिला, आंध्र प्रदेश
	157	यूनियन बैंक ऑफ इंडिया कोडवीडू शाखा कोडवीडू गांव, एडलापाडू मंडल, गुंटूरु 522529 आंध्र प्रदेश

क्षेत्रीय कार्यालय का नाम	क्र सं॰	शाखा/कार्यालय का नाम एवं पता
	158	यूनियन बैंक ऑफ इंडिया सतेनपल्ली शाखा डोर नं॰ 18-7-36, सूर्या टाकीज रोड, डाक व मंडल सतेनपल्ली 522 403, गुंटुरु जिला, आंध्र प्रदेश
	159	यूनियन बैंक ऑफ इंडिया देवरापल्ली शाखा डोर क्र॰ 4-131 मेइन रोड, कोव्वूरु रोड, देवरापल्ली 534 313 पश्चिम गोदावरी जिला आंध्र प्रदेश
	160	यूनियन बैंक ऑफ इंडिया मारुटेरु शाखा डोर नं॰ 5-91, डाक व गांव मारुटेरु ला प गूडेम पालकोल रोड, पेनुमंत्रा मंडल, मारुटेरु 534 122, प॰ गोदावरी जिला आंध्र प्रदेश
	161	यूनियन बैंक ऑफ इंडिया जंगारेड्डीगूडेम शाखा कोव्वूरू रोड, के॰ के॰ काम्पलेक्स, दरवाजा क्र॰ 5-2-29/2 गंगानम्मा मंदिर के निकट, जंगारेड्डीगूडेम 534447 आंध्र प्रदेश
	162	यूनियन बैंक ऑफ इंडिया पिडुगुराल्ला शाखा डोर क्र॰ 7-4-07, विग्नेशवरा काम्पलेक्स, मेईन रोड, डाक व मंडल पिडुगुराल्ला 522 413 गुंटूरु जिला आंध्र प्रदेश
	163	यूनियन बैंक ऑफ इंडिया तिरुवूरु शाखा डोर नं॰ 5-147, कालेज रोड, बोस बोममा के पास, डेवलपमेंट ब्लॉक, तिरुवूरु 521 235 कृष्णा जिला विजयवाडा
	164	यूनियन बैंक ऑफ इंडिया बुधवार मार्केट प॰ गोदावरी जिला शाखा डोर नं॰ 16-2-207, पी पी रोड, बुधवार मार्केट, भीमवरम 534 201, प॰ गोदारी जिला, आंध्र प्रदेश
	165	यूनियन बैंक ऑफ इंडिया नरसाराव पेट शाखा डोर क्र॰ 9-9-44, क स्ट्रीट अरंडल पेट, नरसाराव पेट 522 601 गुंटूरु जिला आंध्र प्रदेश
क्षेत्रीय कार्यालय विशाखापट्टणम	166	यूनियन बैंक ऑफ इंडिया, वित्तीय समावेशन शाखा, लक्कवरम मैन रोड, ग्राम लक्कवरम चोडवरम-मंडलम जिला विशाखापट्टणम (आ॰प्र॰) पिन 531075
	167	यूनियन बैंक ऑफ इंडिया, पेंदूर्ती शाखा, 80 फीट रोड, रत्नगिरी नगर चिन्ना मुशिरिवाडा, पेंदुर्ती जिला विशाखापट्टणम आं॰प्र॰ पिन-530051
	168	यूनियन बैंक ऑफ इंडिया, चेपला उप्पाडा शाखा ग्राम एवं पोस्ट-चेपला उप्पाडा भीमुनिपटनम मंडल जिला विशाखापट्टणम आं॰प्र॰ पिन-531163
	169	यूनियन बैंक ऑफ इंडिया, ईताकोटा शाखा ग्राम एवं पोस्ट ईताकोटा राउलपालेम मंडल जिला-पूर्व गोदावरी आं॰प्र॰ 533238
क्षेत्रीय कार्यालय सिलीगड़ी	170	यूनियन बैंक ऑफ इंडिया, भालुका रोड शाखा मसालदह बाजार, पोस्ट-करियाली जिला मालदा (पश्चिम बंगाल) पिन 732125
	171	यूनियन बैंक ऑफ इंडिया, कलिंगपोंग शाखा थाना दरा, पोस्ट कलिंगपोंग, जिला: दार्जलिंग 734401 (पश्चिम बंगाल)
	172	यूनियन बैंक ऑफ इंडिया, बिश्नुपुरशाखा, ग्राम व पोस्ट बिश्नुपुर वाया: रामपुरहाट जिला: बीरभूम पिन 731244 (प॰बं॰)
	173	यूनियन बैंक ऑफ इंडिया, बोलपुर शाखा मिशन कम्पाउण्ड, पोस्ट बोलपुर, जिला बीरभूम (पश्चिम बंगाल) पिन 731204

क्षेत्रीय कार्यालय का नाम	क्र॰ सं॰	शाखा/कार्यालय का नाम एवं पता
	174	यूनियन बैंक ऑफ इंडिया, डाबग्राम शाखा 558, सूर्या नगर, 1 नं॰ डाबग्राम सिलीगुड़ी जिला दार्जीलिंग (पश्चिम बंगाल) पिन 734006
	175	यूनियन बैंक ऑफ इंडिया, दार्जीलिंग शाखा 5, डॉ एस एम दास रोड, आनंद पैलेस होटल, (पहली मंजिल) पोस्ट व जिला दार्जीलिंग (पश्चिम बंगाल) पिन 734101
	176	यूनियन बैंक ऑफ इंडिया, देशबंधु पाडा शाखा, सिलीगुड़ी देशबंधु रोड, पोस्ट: सिलीगुड़ी टाउन जिला दार्जीलिंग, पिन 734004
	177	यूनियन बैंक ऑफ इंडिया, धूपगडी शाखा बी आर कॉम्प्लेक्स, पहली मंजिल, फलाकांटा रोड, धूपगडी, जिला जलापईगुडी (पश्चिम बंगाल) पिन: 735210
	178	यूनियन बैंक ऑफ इंडिया, गंगाधारी शाखा ग्राम व पोस्ट: गंगाधारी, जिला मुर्शिदाबाद (पश्चिम बंगाल) पिन: 742121
	179	यूनियन बैंक ऑफ इंडिया, गंगटोक शाखा एन॰एच॰ 31, एम जी मार्ग, गंगटोक (सिक्किम) पिन 737101
	180	यूनियन बैंक ऑफ इंडिया, गीजिंग शाखा, पेमायांग्त्से मॉनेस्टरी, गीजिंग बाजार, ओल्ड अद्दा बिल्डिंग, गीजिंग, जिला पश्चिम सिक्किम पिन: 737111
	181	यूनियन बैंक ऑफ इंडिया, जलपाईगुडी शाखा, 240/ए पहली मंजिल, टैम्पल स्ट्रीट, जिला: जलपाईगुडी (पश्चिम बंगाल) पिन 735101
	182	यूनियन बैंक ऑफ इंडिया, जोरथंग शाखा, जोरथंग बाजार, पोस्ट नया बाजार, जोरथंग (दक्षिण सिक्किम) पिन 737 121
	183	यूनियन बैंक ऑफ इंडिया, कुंदल शाखा, ग्राम व पोस्ट कुंदल जिला मुर्शिदाबाद (पश्चिम बंगाल) पिन 731246
	184	यूनियन बैंक ऑफ इंडिया, कुनुरी शाखा ग्राम व पोस्ट: कुनुरी जिला: बीरभूम (पश्चिम बंगाल) पिन 731252
	185	यूनियन बैंक ऑफ इंडिया, मारग्राम शाखा, ग्राम व पोस्ट मारग्राम, जिला बीरभूम (पश्चिम बंगाल), पिन 731 217
	186	यूनियन बैंक ऑफ इंडिया, मंगन शाखा, मंगन बाजार मंगन जिला उत्तरी सिक्किम, पिन 737 116
	187	यूनियन बैंक ऑफ इंडिया, नारायणपुर शाखा ग्राम व पोस्ट नारायणपुर वाया रामपुरहाट, जिला बीरभूम (पश्चिम बंगाल) पिन: 731 239
	188	यूनियन बैंक ऑफ इंडिया, पुलिंदा शाखा ग्राम व पोस्ट पुलिंदा जिला मुर्शिदाबाद (पश्चिम बंगाल), पिन 742 121
	189	यूनियन बैंक ऑफ इंडिया, रामपुरहाट शाखा ग्राम व पोस्ट रामपुरहाट जिला बीरभूम (पश्चिम बंगाल) पिन: 731 224
	190	यूनियन बैंक ऑफ इंडिया, रानीपूल शाखा, एन एच 31ए, रानीपूल जिला पूर्व सिक्किम पिन-737 138

क्षेत्रीय कार्यालय का नाम	क्र॰ सं॰	शाखा/कार्यालय का नाम एवं पता
	191	यूनियन बैंक ऑफ इंडिया, सेंथिया शाखा, नजरुल इस्लाम सारनी, पोस्ट: सेंथिया, जिला बीरभूम (प॰बं॰) पिन 731 234
	192	यूनियन बैंक ऑफ इंडिया, शाल्दामोर शाखा पोस्ट: एम डी बाजार, जिला बीरभूम (प॰बं॰) पिन 731 127
	193	यूनियन बैंक ऑफ इंडिया, सिलीगुडी मुख्य शाखा, कृष्णा हाउस, हिल कार्ट रोड, सिलीगुडी (प॰बं॰) पिन 734 001
	194	यूनियन बैंक ऑफ इंडिया, सिंगटॉम शाखा, मेन रोड, पोस्ट सिंगटॉम, जिला पूर्वी सिक्किम पिन 737 134
	195	यूनियन बैंक ऑफ इंडिया, सिवडी शाखा, न्यू दंगलपाडा, नया बस स्टैण्ड के पास, पोस्ट सिवडी पिन 731101 जिला बीरभूम (प॰बं॰)
	196	यूनियन बैंक ऑफ इंडिया, सिक्किम मणिपाल इंस्टीट्यूट ऑफ टैक्नालॉजी शाखा (एसएमआईटी) माजीतार, जिला पूर्वी सिक्किम, पिन 737 132
	197	यूनियन बैंक ऑफ इंडिया, सिलीगुडी महाकुमा परिषद, (एसएमी) सिलीगुडी शाखा सिलीगुडी, (प॰बं॰), पिन: 734001
	198	यूनियन बैंक ऑफ इंडिया, सिलीगुडी इन्स्टीट्यूट ऑफ टेक्नालॉजी, एस आई टी शाखा, सलबरी, सुकना, सिलीगुडी, जिला दार्जीलिंग (प॰बं॰) पिन: 734 225
	199	यूनियन बैंक ऑफ इंडिया, फालाकाटा शाखा, सुभाष पल्ली, फालाकाटा, जिला: जलपाईगुडी (प॰बं॰), पिन 735 211
	200	यूनियन बैंक ऑफ इंडिया, बालुरघाट शाखा, प्रमोद भवन, लीला लॉज के सामने, नारायणपुर, बालुरघाट, जिला दक्षिण दीनाजपुर (प॰बं॰), पिन 733 101
	201	यूनियन बैंक ऑफ इंडिया, सेवा शाखा, सुखसदन, 37, बिपिन पाल सरनी, कॉलेज पाडा, सिलीगुडी (प॰बं॰) पिन 734 001
	202	यूनियन बैंक ऑफ इंडिया, क्षेत्रीय कार्यालय, सचिन सौरव अपार्टमेंट, अशुतोष मुखर्जी रोड, कॉलेज पाडा, सिलीगुडी (प॰बं॰), पिन 734 001
क्षेत्रीय कार्यालय गोवा	203	यूनियन बैंक ऑफ इंडिया, कारमोना शाखा सालकेटे, पो॰ कारमोना, गोवा दक्षिण गोवा पिन 403 717
	204	यूनियन बैंक ऑफ इंडिया, फोंडाघाट शाखा 342/2 बी उगाई कॉम्प्लेक्स, बाजार पथ, जिला सिन्धुदुर्ग महाराष्ट्र, पिन 406 601
	205	यूनियन बैंक ऑफ इंडिया, दापोली शाखा एच एण्ड डी हाऊस, फेंमिली मॉल रोड, ता॰ दापोली, जिला रत्नागिरी, पिन 415 712
	206	यूनियन बैंक ऑफ इंडिया, सेवा शाखा, मॉडल रेसिडेन्सी शॉप नं॰ 6, 7, 8 सांतिनेज चर्च रोड, सांतिनेज पणजी जिला: उत्तर गोवा, पिन 403001
	207	यूनियन बैंक ऑफ इंडिया, कुवरभाब शाखा, श्री समर्थ कृपा, पडवेवाडी मीरजोलि, ग्राम कुवारभाव, जिला रत्नागिरी महाराष्ट्र, पिन 415 639
	208	यूनियन बैंक ऑफ इंडिया, गुहागर शाखा, गुहागर एस टी डिपो के पास पोस्ट एवं तालुका गुहागर जिला रत्नागिरी, महाराष्ट्र, पिन 415 703

क्षेत्रीय कार्यालय का नाम	क्र॰ सं॰	शाखा/कार्यालय का नाम एवं पता
क्षेत्रीय कार्यालय तिरूवनंतपुरम	209	यूनियन बैंक ऑफ इंडिया, कांतलूर शाखा, कोविलकडवु, 210/8, सहायगिरी पो॰ आ॰ इडुक्की जिला–620 685
	210.	यूनियन बैंक ऑफ इंडिया, पाला शाखा, मून्स भवन, मिनि सिविल स्टेशन के सामने, पाला 686 557–कोट्टयम जिला,
	211.	यूनियन बैंक ऑफ इंडिया, पोन्कन्नम, शाखा (वाषूर) वट्टकाट्टु भवन, केविएमएस जंक्शन, एनएच, पोन्कुन्नम, 220–जिला कोट्टयम पिन–686 575
	212.	यूनियन बैंक ऑफ इंडिया, वैकम शाखा, कणियंपरंबिल, आर्केड, वलिय कवल बस स्टैण्ड, वैकम, जिला कोट्टयम पिन–686 141
	213.	यूनियन बैंक ऑफ इंडिया, अरूर शाखा, डोर क्र॰ VII/896–बि, 47 एन॰एच॰जी॰ पी॰एच॰ सेन्टर और ग्रामीण कार्यालय के पास अरुरआलप्पुष्पा,
	214.	यूनियन बैंक ऑफ इंडिया, कार्तिकपल्ली शाखा, कोच्चुपरंबिल भवन, आलप्पुष्पा, पिन–690 516
	215.	यूनियन बैंक ऑफ इंडिया, काडुतुरथी (वैकम) शाखा, पहली मंजिल, कुमार कॉम्प्लेक्स, सेन्ट्रल कॉम्प्लेक्स, कुडुतरूथी, वैकम तालुक कोट्टयम जिला पिन–686 604
	216.	यूनियन बैंक ऑफ इंडिया, कुमिलि शाखा, दुबाई कॉम्प्लैक्स, एन॰एच॰ 220 कुमिलि पिन–685 509
	217.	यूनियन बैंक ऑफ इंडिया, वंडिप्पेरियार शाखा, जया भवन, के॰के॰ रोड, वडिप्पेरियार पो॰आ॰, इडुक्की जिला पिन–685 533
	218.	यूनियन बैंक ऑफ इंडिया, कुमारपुरम शाखा (तिरूवनंतपुरम), देवी स्कैन्स् भवन, कुमारपुरम, मेडिकल कॉलेज, पो॰ आ॰ 7. तिरूवनंतपुरम पिन–695 011

राजभाषा नियम 1976 के नियम 10 (4) के अंतर्गत अधिसूचित की जाने वाली शाखाओं की सूची

दिल्ली क्षेत्र

क्र॰ सं॰	शाखा का नाम एवं कोड नं॰	शाखा का पता
219.	मयूर विहार फेस III–2442	इण्डियन ओवरसीज़ बैंक प्लॉट नं॰ 7 एवं 8, अग्रवाल टावर डीडीए, शॉपिंग केन्द्र, कोंडली घरौली, मयूर विहार फेस–III, दिल्ली–110 096
220.	नांगलोई, दिल्ली–2443	इण्डियन ओवरसीज़ बैंक ए–20, अध्यापक नगर नज़फगढ़ रोड हनुमान मंदिर के सामने नांगलोई, दिल्ली–110 041
221.	मेहरौली, दिल्ली–2444	इण्डियन ओवरसीज़ बैंक 893–ए/8, भूतल, मैन बाजार मेहरौली दिल्ली–110 030
222.	द्वारका सेक्टर–20, 2445	इण्डियन ओवरसीज़ बैंक जी–4, भूतल, मनीष हाई प्लाजा प्लॉट नं॰ 25 सेवा केन्द्र, सेक्टर 20, द्वारका नई दिल्ली–110 075
223.	अशोक विहार–2259	इण्डियन ओवरसीज़ बैंक ए–6 अशोक विहार फेस–II नार्थ डिस्ट्रिक्ट नई दिल्ली–110 052
224.	मौर्य इन्क्लेव	इण्डियन ओवरसीज़ बैंक 29, 30, 31 के॰पी॰ ब्लॉक पेसिफिक मॉल, पीतम पुरा (वेस्ट) मौर्य इन्क्लेव नार्थ वेस्ट डिस्ट्रिक्ट नई दिल्ली 110 034
225.	नजफगढ़–2261	इण्डियन ओवरसीज़ बैंक आर॰ जेड–15 भूतल पुराना रोशनपुरा नजफगढ़ वेस्ट डिस्ट्रिक्ट नई दिल्ली–110 043

क्र॰ सं॰	शाखा का नाम एवं कोड नं॰	शाखा का पता
226.	आनन्द विहार–2356	इण्डियन ओवरसीज़ बैंक जी–1, प्लॉट नं॰ 11 चेतन कम्प्लैक्स III सूरज मल विहार लोकल शॉपिंग सेन्टर आनन्द विहार नई दिल्ली–110 092
227.	मुण्डका–2357	इण्डियन ओवरसीज़ बैंक खसरा नं॰ 428/4 गॉव: मुण्डका दिल्ली 110 041
228.	महीपाल पुर–2358	इण्डियन ओवरसीज़ बैंक ए–7, ब्रहमपुत्र हाऊस दिल्ली–110 037
229.	संचार भवन	इण्डियन ओवरसीज़ बैंक संचार एवं सूचना प्रौद्योगिकी विभाग, संचार भवन संचार मंत्रालय, भारत सरकार अशोक रोड नई दिल्ली–110 001
230.	ईस्ट ऑफ कैलाश शाखा	इण्डियन ओवरसीज़ बैंक सी–36, राजा हसन मार्ग ईस्ट ऑफ कैलाश नई दिल्ली–110 048
231.	मयूर विहार फेज़–II शाखा	इण्डियन ओवरसीज़ बैंक 23 प्रथम तल कृष्णा आर्केड एल॰एस॰सी॰, मयूर विहार फेज़–II नई दिल्ली–110 092
लखनऊ क्षेत्र		
232.	अयोध्या, 2369	इण्डियन ओवरसीज़ बैंक पुराना बस स्टैंड, हनुमानगढी, अयोध्या,–224133–उ॰प्र॰
233.	चित्रकूट धाम (कर्वी)–2472	इण्डियन ओवरसीज़ बैंक 440/2, द्वारिकापुरी, मंदाकिनी रोड पुरानी बाजार कर्वी–उ॰ प्र॰, पिन–210205
234.	गोसाईगंज–2516	इण्डियन ओवरसीज़ बैंक प्लाट नं॰ 28, सदरपुर करोरा, गोसाईगंज, जिला–लखनऊ उ॰ प्र॰, पिन–227125
235.	इटौंजा–2517	इण्डियन ओवरसीज़ बैंक प्लाट नं॰ 215, वार्ड नं॰ 7 नगर पंचायत, इटौंजा, जिला–लखनऊ उ॰ प्र॰ पिन–226205
236.	लालगंज–2370	इण्डियन ओवरसीज़ बैंक काकाकुंज, महेश नगर, महेश नगर, लालगंज जिला–रायबरेली, उ॰ प्र॰ 229 206
237.	महोना–2512	इण्डियन ओवरसीज़ बैंक मकान नं॰ 533, शेख टोला इटौंजा–कुर्सी, महोना जिला–लखनऊ, उ॰ प्र॰–227205
238.	मऊ आइमा–2471	इण्डियन ओवरसीज़ बैंक 172, स्टेशन रोड, मऊ आइमा, जिला–इलाहाबाद उ॰ प्र॰–212501
239.	पट्टी–2511	इण्डियन ओवरसीज़ बैंक मकान नं॰ 1, वार्ड नं॰ 2, सिविल लाइन, पट्टी टाउन, जिला–प्रतापगढ़, उ॰ प्र॰–230135
240.	सीतापुर–2181	इण्डियन ओवरसीज़ बैंक मेन मार्केट रोड, सीतापुर–273402, उ॰ प्र॰
241.	सुल्तानपुर–2386	इण्डियन ओवरसीज़ बैंक सिविल लाइन्स, बस रोड के सामने सुल्तानपुर–228001, उ॰ प्र॰
242.	प्रतापगढ़–2362	इण्डियन ओवरसीज़ बैंक चावला आर्केड, भंगवा चूंगी, प्रतापगढ़–230001 उ॰ प्र॰
243.	जैदपुर (बाराबंकी)–2361	इण्डियन ओवरसीज़ बैंक रायेन काम्प्लेक्स, सिधोर रोड, जैदपुर–225414, जिला–बाराबंकी उ॰ प्र॰
244.	चन्दौली–2572	इण्डियन ओवरसीज़ बैंक प्लाट नं॰ 453, शंकर सिंह, अस्पताल के पास, चन्दौली–232104, उ॰ प्र॰

क्र॰ सं॰	शाखा का नाम एवं कोड नं॰	शाखा का पता
245.	माती–2571	इण्डियन ओवरसीज़ बैंक प्लाट नं॰ 56, माती बाजार, रैदुआ पल्हरी, चिनहटदेवा रोड, पो॰–मुरादाबाद, माती–225301 जिला–बाराबंकी–उ॰ प्र॰
246.	महारागंज–2557	इण्डियन ओवरसीज़ बैंक 989, शास्त्री नगर, नगरपालिका परिषद, महाराजगंज, 273303–उ॰ प्र॰
247.	महेवा पट्टी–2556	इण्डियन ओवरसीज़ बैंक 46डी, इंदलपुर रोड, पुलिस चौकी के सामने, एमपी चौराहा, नैनी, इलाहाबाद–211007–उ॰ प्र॰
मेरठ क्षेत्र		
248.	भानियावाला–2503	इण्डियन ओवरसीज़ बैंक आर्शीवाद भवन, दुर्गा चौक, ऋषिकेश रोड, भानियावाला पोस्ट–डोईवाला, जिला देहरादून–248198
249.	जलालपुर–2467	इण्डियन ओवरसीज़ बैंक जहार वीर मंदिर के पास, खैर रोड, कोईल नहसी, ग्राम जलालपुर–202 001,
250.	काशीपुर 2217	इण्डियन ओवरसीज़ बैंक, चामुण्डा कॉम्प्लैक्स, रामनगर रोड, काशीपुर, पिन – 244713, जिला – उद्यम सिंह नगर (उत्तराखण्ड)
251.	कर्ण प्रयाग 2529	इण्डियन ओवरसीज़ बैंक, होटल पार्कदीप, पो॰आ॰ गाँधीनगर, कर्ण प्रयाग, जिला – चमौली, पिन – 246444, गढ़वाल, उत्तराखण्ड
252.	रामनगर 2216	इण्डियन ओवरसीज़ बैंक, इंगवाल टावर, एम॰पी॰ कॉलेज फील्ड के सामने रामनगर, पिन – 244715, जिला – नैनीताल (उत्तराखण्ड)
253.	रुद्रप्रयाग 2530	इण्डियन ओवरसीज़ बैंक, नये बस स्टैण्ड के पास, रुद्रप्रयाग, जिला – रुद्रप्रयाग, उत्तराखण्ड, पिन – 246171
254.	स्टेडियम रोड, बरेली 2365	इण्डियन ओवरसीज़ बैंक, पह–5/15, स्टेडियम रोड़, डीडी पुरम, बरेली, पिन – 243005
255.	सुद्दोवाला 2305	इण्डियन ओवरसीज़ बैंक, 23 ग्रा॰ सुद्दोवाला, पो॰आ॰ झाझरा तालुक विकास नगर, ब्लॉक नगर, ब्लॉक सहसपुर, देहरादून, पिन – 248007
256.	श्रीनगर – गढ़वाल 2528	इण्डियन ओवरसीज़ बैंक, संजय टॉकीज बिल्डिंग, श्रीनगर – गढ़वाल, बद्रीनाथ मैन रोड, पो॰आ॰ पॉड़ी गढ़वाल, उत्तराखण्ड
257.	विकास नगर 2502	इण्डियन ओवरसीज़ बैंक, बख्तावर सिंह मार्ग, मुख्य बाजार, विकास नगर, जिला – देहरादून, पिन – 248198
पटना क्षेत्र		
258.	पूर्णिया शाखा	इण्डियन ओवरसीज़ बैंक, मधुबनी बाजार सहरसा रोड़, पूर्णिया, पिन – 854301 जिला – पूर्णिया, बिहार
259.	बोरिंग रोड शाखा	इण्डियन ओवरसीज़ बैंक, न्यू पाटलिपुत्र कॉलोनी, सी॰आई॰एस॰एफ॰ कार्यालय के पास बोरिंग रोड, पटना, पिन – 800013 जिला – पटना, बिहार
260.	सिवान शाखा	इण्डियन ओवरसीज़ बैंक, वार्ड सं॰ 16, स्टेशन रोड बाबूनिया मोड़, सिवान, पिन – 841226 जिला – सिवान, बिहार

क्र॰ सं॰	शाखा का नाम एवं कोड नं॰	शाखा का पता
261.	गोपालगंज शाखा	इण्डियन ओवरसीज़ बैंक, चूना गली (केनरा बैंक के पास) जादवपुर रोड़ गोपालगंज, पिन – 841428 जिला – गोपालगंज, बिहार
262.	बिहार शरीफ शाखा	इण्डियन ओवरसीज़ बैंक, रामराज कॉम्प्लेक्स, रामचन्द्रपुरी, बिहारशरीफ, पिन – 803101 जिला – नालन्दा, बिहार
263.	मधुबनी शाखा	इण्डियन ओवरसीज़ बैंक, वाटसन इन्टर कॉलेज के पीछे, अस्पताल रोड, मधुबनी, पिन – 847211 जिला – मधुबनी, बिहार
264.	छपरा शाखा	इण्डियन ओवरसीज़ बैंक, हनुमान मंदिर के पास, मौना गोला रोड़, छपरा, पिन – 841301 जिला – सारन, बिहार
265.	बेगूसराय शाखा	इण्डियन ओवरसीज़ बैंक, श्याम कामर्शियल कॉम्पलैक्स, कचहरी रोड़, बेगूसराय, पिन – 851101 जिला – बेगूसराय
266.	कहलगाँव शाखा	इण्डियन ओवरसीज़ बैंक, नव चेतना केन्द्र थाना रोड़, कहलगाँव रोड़, पिन – 813203 जिला – भागलपुर, बिहार
267.	बक्सर शाखा	इण्डियन ओवरसीज़ बैंक, नवदुर्गा कॉम्पलैक्स कलेक्ट्रियट रोड, अम्बेदकर चौक, बक्सर, पिन – 802103 जिला – बक्सर, बिहार
268.	आरा शाखा	इण्डियन ओवरसीज़ बैंक, महाराणा प्रताप नगर, न्यू पुलिस लाईन रोड़, आरा, पिन – 802301 जिला – भोजपुर
269.	हिनू, राँची शाखा	इण्डियन ओवरसीज़ बैंक, हिनू, राँची शाखा, आईलेक्स शिवांगी कॉम्पलैक्स के पीछे, मेन रोड़ हिनू, राँची, पिन – 834002 जिला – राँची, बिहार
270.	साहिबगंज शाखा	इण्डियन ओवरसीज़ बैंक, साहिबगंज शाखा, टाउन थाना, चौक बाजार के पास, शशि भूषण रोड़, साहेबगंज, पिन – 816109 जिला – साहेबगंज, बिहार
271.	सरायढेला शाखा	इण्डियन ओवरसीज़ बैंक, सरायढेला शाखा, वार्ड सं॰ 28 मैन रोड़, सरायढेला धनबाद जिला – धनबाद, बिहार
272.	चाईबासा शाखा	इण्डियन ओवरसीज़ बैंक, एल॰ डी॰ हाउस, अमला टोला सदर बाजार स्टेशन रोड़, चाईबासा, पिन – 833201, जिला – पश्चिम सिंहभूम, बिहार
273.	साकची शाखा	इण्डियन ओवरसीज़ बैंक, 66, पेन्नार रोड़ साकची, जमशेदपुर, पिन – 831001, जिला – पूर्व सिंहभूम, बिहार
274.	कोडरमा शाखा	इण्डियन ओवरसीज़ बैंक, प्लॉट सं॰ 3409, वार्ड सं॰ 6, पंजाब होटल के पास, पटना राँची रोड, कोडरमा, पिन – 825410, जिला – कोडरमा, बिहार
275.	सिमरी शाखा	इण्डियन ओवरसीज़ बैंक, प्रथम तल सिमरी गोविन्दपुर, सिमरी थाना के पास पोस्ट ऑफिस कंसी सिमरी, जिला – दरभंगा, पिन – 847106, बिहार
276.	शिक्षा भवन शाखा,	इण्डियन ओवरसीज़ बैंक, बिहार राजभाषा परिषद् कैम्पस, आचार्य शिवपूजन सहाय पथ सैदपुर, जिला – पटना, पिन – 800004
277.	लोहरदगा शाखा	इण्डियन ओवरसीज़ बैंक, प्रथम तल, एम॰एम॰ मार्केट राना चौक, लोहरदगा, जिला – लोहरदगा, पिन – 835302
278.	हाजीपुर शाखा	इण्डियन ओवरसीज़ बैंक, प्रथम तल एस॰एस॰ कॉम्पलैक्स, जौहरी बाजार हाजीपुर, वैशाली, बिहार, पिन – 844101

क्र॰ सं॰	शाखा का नाम एवं कोड नं॰	शाखा का पता
279.	भगवानपुर शाखा	इण्डियन ओवरसीज़ बैंक, प्रथम तल, गोपाल मार्केट, भगवानपुर चट्टी, रेवा रोड़, मुजफ्फरपुर, पिन – 842001
280.	गोड्डा शाखा	इण्डियन ओवरसीज़ बैंक, प्रथम तल, वार्ड सं॰ 6, पीरपैंती रोड़, हटिया चौक, गोड्डा, पिन – 814133, झारखंड
भोपल क्षेत्र		
281.	विदिशा 2167	इण्डियन ओवरसीज़ बैंक, प्लॉट नं॰ 60, वार्ड नं॰ 7, एनएच–86, बस स्टैण्ड के पास, विदीशा, पिन – 464001
282.	सीपीआरआई – भोपाल 2171	इण्डियन ओवरसीज़ बैंक, सेन्ट्रल पॉवर रिसर्च इंस्टीट्यूट, गोविन्दपुरा, भोपाल, पिन – 460 023,
283.	गोविन्दपुरा 2233	इण्डियन ओवरसीज़ बैंक, 6 पंजाबी बाग, गोविन्दपुरा, भोपाल, पिन – 402023, जिला – भोपाल
284.	मंडीदीप 2327	इण्डियन ओवरसीज़ बैंक, 2–ए, इन्दिरा नगर, एचइजी मंडीदीप के सामने, जिला – रायसेन, भोपल (म प्र), पिन – 462046
285.	लालघाटी – भोपाल 2413	इण्डियन ओवरसीज़ बैंक, 39 जानकी नगर, गुफा मंदिर रोड़, गुफा मंदिर, लालघाटी, भोपाल, पिन – 462002
286.	सीहोर 2419	इण्डियन ओवरसीज़ बैंक, मकान नं॰ 40, जयन्ती कॉलोनी, सेकडाखेडी रोड़, सीहोर, म॰प्र॰, पिन – 466001
287.	गुलमोहर कॉलोनी – इन्दौर 2415	इण्डियन ओवरसीज़ बैंक, सुभद्रा हाउस, 11 जय बिल्डर्स कॉलोनी, साकेत, गुलमोहर कॉलोनी के पास, इन्दौर, पिन – 452018
288	मुरवारा–कटनी 2418	इण्डियन ओवरसीज़ बैंक, बर्डस्ले इंग्लिश स्कूल कैम्पस, मुरबारा मिशन चौक, कटनी, वार्ड सं॰ 5, चन्द्रशेखर आजाद वार्ड, मकान सं॰436 से 436/9कटनी, म॰प्र॰, पिन–483 501
289	होशंगाबाद 2416	इण्डियन ओवरसीज़ बैंक, प्लाट सं॰ 1 आनन्द नगर, होशंगाबाद, म॰प्र॰, पिन–461 001
290	शिवपुरी 2420	इण्डियन ओवरसीज़ बैंक, मकान सं॰ 1326, क्वार्टर सं॰3, राम आर्केड, झांसी तिराहा, ए॰बी॰रोड, शिवपुरी, म॰प्र॰– 473 551
291	मुरैना 2417	इण्डियन ओवरसीज़ बैंक, 160/3, वार्ड सं॰ 34 एसपी बंग्ला के सामने, एम॰एस॰ मुरैना, म॰प्र॰, पिन–476 001
292	देवास 2414	इण्डियन ओवरसीज़ बैंक, 01. मालवा शहनाई कॉम्प्लेक्स, अपेक्स हास्पीटल के सामने, तिलक नगर, ए॰ बी॰ रोड, देवास, म॰प्र॰, पिन–455 001
293	रायगढ़ 2466	इण्डियन ओवरसीज़ बैंक, प्रथम तल, मोदी प्लाजा, जगतपुर रोड, रायगढ़, छत्तीसगढ़, पिन – 496 001
294	टिल्डा 2323	इण्डियन ओवरसीज़ बैंक, आर॰के॰एस॰ प्लाजा, खरोरा रोड, टिल्डा, डाकखाना – निओरा, जिला – रायपुर, छत्तीसगढ़, पिन – 493 114
295	माना 2324	इण्डियन ओवरसीज़ बैंक, द्वारा गौरी जोद्दार, माना कैंप मेन रोड, नयोदय क्वाटर्स के सामने, जिला–रायपुर, छत्तीसगढ़, पिन – 491 107
296	उतई 2325	इण्डियन ओवरसीज़ बैंक, आशा कॉम्प्लेक्स (पाटन पुल), मेन रोड, उतई, जिला – दुर्ग, छत्तीसगढ़, पिन – 491 107
297	धनोरा 2326	इण्डियन ओवरसीज़ बैंक, द्वारा दामोदर प्रसाद साहू, ग्राम–धनोरा, डाकखाना–हनोदा, जिला–दुर्ग, छत्तीसगढ़, पिन–491 001

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जयपुर क्षेत्र		
298	बपुई 2696	इण्डियन ओवरसीज़ बैंक, टिकाना बपुई ग्राम, बपुई, बोली तहसील सवाई माधोपुर, 322023 राजस्थान
299	टोंक 2682	इण्डियन ओवरसीज़ बैंक, द्वारिकेश, ननर बाग पैलेस रोड, टोंक–304001 राजस्थान
300	चांदपोल 2426	इण्डियन ओवरसीज़ बैंक, 1193, उनियारों का रास्ता, चांदपोल बाजार, जयपुर, पिन–313324 राजस्थान
301	विद्याधर नगर 2427	इण्डियन ओवरसीज़ बैंक, शॉप नं 20–24, ग्राउंड फ्लोर, अलंकार प्लाजा, सेंट्रल स्पाइन, विद्याधर नगर, 303303 राजस्थान
302	जैसलमेर 2428	इण्डियन ओवरसीज़ बैंक, बी–453, मंदिर पैलेस के सामने, ताजिया टावर के पास, जैसलमेर, पिन–321001 राजस्थान
303	राजसमंद 2429	इण्डियन ओवरसीज़ बैंक, पगरिया इस्टेट, पगरिया मार्केट, मुखर्जी सर्किल, राजसमंद, पिन–306401 राजस्थान
304	बाड़मेर 2430	इण्डियन ओवरसीज़ बैंक, गोस्वामी टावर, रॉय कॉलोनी रोड, सिविल हॉस्पिटल बिल्डिंग, बाड़मेर, पिन–322001 राजस्थान
305	चित्तौडगढ़ 2431	इण्डियन ओवरसीज़ बैंक, इनानी रेसीडेंसी, भीलवाड़ा रोड, चित्तौड़गढ़, पिन–332001 राजस्थान
306	दौसा 2432	इण्डियन ओवरसीज़ बैंक, प्लॉट नं 1–2–3, नेशनल हाइवे–11, जयपुर आगरा रोड, दौसा, पिन – 312001 राजस्थान
307	बूंदी 2433	इण्डियन ओवरसीज़ बैंक, देवश्री कॉम्प्लेक्स, बाईपास रोड, बूंदी, पिन – 302023 राजस्थान
308	भरतपुर 2434	इण्डियन ओवरसीज़ बैंक, सिंघल नरसिंह होम, काली की बगीची के सामने, सर्कुलर रोड, भरतपुर, पिन – 344001 राजस्थान
309	सवाई माधोपुर 2435	इण्डियन ओवरसीज़ बैंक, शुक्ला भवन, गोवर्धन कॉलोनी, न्यू ग्रेन मंडी रोड, सवाई माधोपुर, पिन – 323001 राजस्थान
310	सीकर 2436	इण्डियन ओवरसीज़ बैंक, बाइस्कोप प्राइवेट लिमिटिड के पास, शास्त्री नगर, रानी सती रोड, सीकर, पिन – 302001 राजस्थान
311	हनुमानगढ़ 2437	इण्डियन ओवरसीज़ बैंक, बाबा श्याम सिंह कॉम्प्लेक्स, हनुमानगढ़, पिन – 345001 राजस्थान
312	पाली 2438	इण्डियन ओवरसीज़ बैंक, जय नारायण व्यास कॉलोनी, पाली, पिन – 335512
313	महवा 2540	इण्डियन ओवरसीज़ बैंक, पुलिस स्टेशन के सामने, जयपुर आगरा रोड, महवा, दौसा, पिन – 321608 राजस्थान
314	निवाई 2539	इण्डियन ओवरसीज़ बैंक, नगर पालिका जयपुर कोटा रोड जमात निवाई, पिन – 304021 राजस्थान
315	लालसोट 2541	इण्डियन ओवरसीज़ बैंक, अनाज मंडी के पास, सवाई माधोपुर रोड, लालसोट, पिन – 303503 राजस्थान
316	पुष्कर 2542	इण्डियन ओवरसीज़ बैंक, बस स्टैंड रोडवे के पास गुरुद्वारे के सामने पुष्कर–अजमेर, पिन – 305022 राजस्थान
317	आबु रोड 2330	इण्डियन ओवरसीज़ बैंक, वार्ड नं॰ 3 मनपुर, माउंट रोड, आबु रोड, सिरोही, पिन – 307206

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318	नीमराना 2307	इण्डियन ओवरसीज़ बैंक, शॉप नं॰ 32, इंडस्ट्रियल एरिया, नीमराना, अलवर, पिन – 301706 राजस्थान
319	बांदीकुई 2607	इण्डियन ओवरसीज़ बैंक, प्रथम तल, पुजारी का कटला 16 राजा बाजार, गर्ल्स कॉलेज के पीछे, बांदीकुई, पिन – 303313 राजस्थान
320	राजगढ़ 2608	इण्डियन ओवरसीज़ बैंक, खसरा 551/0.5 एक्सिस बैंक एसबीबीजे के बीच, राजगढ़, जिला अलवर, पिन – 301408 राजस्थान
321	बांसवाड़ा 2698	इण्डियन ओवरसीज़ बैंक, तहसील ऑफिस के सामने बांसवाड़ा, जयपुर रोड मोहन कॉलोनी, बांसवाड़ा 327001 राजस्थान
322	मेहरा जाटूवास 2595	इण्डियन ओवरसीज़ बैंक, बस स्टैंड पटवारघर के पास, खसरा नं॰ 108, मेहरा जाटूवास, झंझुनु, पिन – 333036 राजस्थान
323	नागौर 2893	इण्डियन ओवरसीज़ बैंक, गांधी चौक रेलवे स्टेशन नागौर–341001 राजस्थान
324	अजमेर रोड 2790	इण्डियन ओवरसीज़ बैंक, 125, ज्ञान विहार न्यू रोमा नर्सिंग होम, डीसीएम, अजमेर रोड, राजस्थान
325	रोहता 2597	इण्डियन ओवरसीज़ बैंक, 5 वैष्णो विहार आगरा हाइवे रोहता आगरा 282001 उ॰ प्र॰
326	किरावली 2538	इण्डियन ओवरसीज़ बैंक, कृषि प्रसार भवन के पास बाईपास रोड किरावली आगरा 283122 उ॰ प्र॰
327	एतमाद्पुर 2674	इण्डियन ओवरसीज़ बैंक, भीम मार्केट बरहन रोड एतमाद्पुर आगरा 283203 उ॰ प्र॰
328	अछनेरा 2329	इण्डियन ओवरसीज़ बैंक, 2414 अग्रवाल बिल्डिंग ग्राम अछनेरा, आगरा उ॰ प्र॰
329	फतेहाबाद 2895	इण्डियन ओवरसीज़ बैंक, पुलिस स्टेशन के पास, सदर बाजार, फतेहाबाद–283111
330	सिकंदरा रोड 2894	इण्डियन ओवरसीज़ बैंक, निहाल कॉम्पलेक्स, सेक्टर 5, उत्तर प्रदेश आवास विकास कॉलोनी सिकंदरा रोड, जिला–आगरा–282007 उ॰ प्र॰
331	दयाल बाग 2911	इण्डियन ओवरसीज़ बैंक, 8/30 कौशल पुर, बाई पास रोड, **दयाल बाग** आगरा–282005 उ॰ प्र॰
332	बिचपुरी 2916	इण्डियन ओवरसीज़ बैंक, आगरा बिचपुरी मैन रोड, स्टेट बैंक ऑफ इंडिया के सामने, बिचपुरी, जिला–आगरा–283105 उ॰ प्र॰
333	संजय प्लेस 2912	इण्डियन ओवरसीज़ बैंक, शॉप नं॰ 1–10 ग्राउंड फ्लोर 54 प्रतीक टावर एचडीएएसी बैंक के सामने, संजय प्लेस–आगरा–282002 उ॰ प्र॰
334	कीथम 2331	इण्डियन ओवरसीज़ बैंक, कीथम जिला–आगरा उ॰ प्र॰
335	फरह 2611	इण्डियन ओवरसीज़ बैंक, कैलाश नगर बाईपास फरह जिला–मथुरा 28112 उ॰ प्र॰
336	गोकुल 2613	इण्डियन ओवरसीज़ बैंक, नन्दद्वार, गोकुल जिला–मथुरा 281303 उ॰ प्र॰
337	राया 2614	इण्डियन ओवरसीज़ बैंक, 195 रेलवे स्टेशन के सामने राया, मथुरा 281204 उ॰ प्र॰
338	गोवर्धन 2697	इण्डियन ओवरसीज़ बैंक, कुंज बिहारी सेवा सदन राधा कुंड रोड , बस स्टैंड के सामने गोवर्धन–281502 उ॰ प्र॰

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339	सेन्ट्रल बैंक ऑफ इंडिया, बांका, कटारिया रोड, बांका पोस्ट-बांका, जिला-बांका (बिहार)
340	सेन्ट्रल बैंक ऑफ इंडिया, शेखपुरा चांदनी चौक, सिनेमा रोड पो॰ शेखपुरा जिला-शेखपुरा (बिहार)
341	सेन्ट्रल बैंक ऑफ इंडिया, जम्होर ए॰ एन॰ रोड जम्होर पो॰ जम्होर, जिला-औरंगाबाद (बिहार)
342	सेन्ट्रल बैंक ऑफ इंडिया, मोहनिया चांदनी चौक स्टुआर्ट गंज पो॰ मोहनिया, जिला-कैमूर (बिहार)
343	सेन्ट्रल बैंक ऑफ इंडिया, अंकरोहा, ग्रा॰पो॰ अंकरोहा, जिला: औरंगाबाद (बिहार)
344	सेन्ट्रल बैंक ऑफ इंडिया, जहानाबाद, अंबेडकर चौक, कोर्ट एरिया, पो॰ जहानाबाद, जिला-जहानाबाद, (बिहार)
345	सेन्ट्रल बैंक ऑफ इंडिया, वी॰ के॰ एस॰ यू॰ विश्वविद्यालय, कटिरा रोड़ आरा, पो॰-आरा, जिला-भोजपुर (बिहार)
346	सेन्ट्रल बैंक ऑफ इंडिया, एस॰ एन॰ सिन्हा कॉलेज कैंपस, पो॰ औरंगाबाद, जिला-औरंगाबाद (बिहार)
347	सेन्ट्रल बैंक ऑफ इंडिया, ए॰ एम॰ कॉलेज, ए॰ एम॰ कॉलेज कैंपस, कटारी हील रोड, पो॰ आर॰ एस॰ गया, जिला-गया (बिहार)
348	सेन्ट्रल बैंक ऑफ इंडिया, एस॰ बी॰ कॉलेज, एस॰ बी॰ कॉलेज बिल्डिंग पो॰-पकड़ी जिला-भोजपुर (बिहार)
349	सेन्ट्रल बैंक ऑफ इंडिया, के॰ एल॰ एस॰ कॉलेज, गांधीनगर, नवादा, 3 नं॰ बस स्टैंड के पास, पो॰ नवादा, जिला-नवादा (बिहार)
350	सेन्ट्रल बैंक ऑफ इंडिया, किसान कॉलेज कैंपस, पो॰ सोहसराय, जिला-नालंदा (बिहार)
351	सेन्ट्रल बैंक ऑफ इंडिया, फुलबारी शरीफ, खगौल रोड, काली मंदिर, पोस्ट-फुलबारी शरीफ जिला: पटना (बिहार)
352	सेन्ट्रल बैंक ऑफ इंडिया, गंगादेवी महिला कॉलेज, गंगादेवी महिला कॉलेज परिसर, कंकड़बाग, लोहिया नगर, पटना (बिहार)
353	सेन्ट्रल बैंक ऑफ इंडिया, पटना विश्वविद्यालय, पटना कॉलेज परिसर, अशोक राजपथ, पटना (बिहार)
354	सेन्ट्रल बैंक ऑफ इंडिया, टी॰पी॰एस॰ कॉलेज, टी॰पी॰एस॰ कॉलेज परिसर, चिरैयाटांड, पटना (बिहार)
355	सेन्ट्रल बैंक ऑफ इंडिया, महेन्द्रु, चौधरी मार्केट, महेन्द्रु पोस्ट ऑफिस के पास, अशोक राजपथ, पटना (बिहार)
356	सेन्ट्रल बैंक ऑफ इंडिया, नोर्टड्रेम एकेडमी, एन॰डी॰ए॰ परिसर, इंडस्ट्रियल इस्टेट, मेन रोड, पोस्ट-पी॰पी॰ कॉलनी, पटना (बिहार)

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰
357	सेन्ट्रल बैंक ऑफ इंडिया, चौधरी टोला, जगन्नाथ सिंह लेन, पोस्ट-चौधरी टोला, पटना (बिहार)
358	सेन्ट्रल बैंक ऑफ इंडिया, सी॰डी॰ए॰ सी॰डी॰ए॰ परिसर, राजेन्द्र पथ, पटना (बिहार)
359	सेन्ट्रल बैंक ऑफ इंडिया, हिन्दी विद्यापीठ, बी॰एन॰झा रोड, देवघर, जिला-देवघर (झारखंड)
360	सेन्ट्रल बैंक ऑफ इंडिया, सगमा, डाकघर-कटहरकला, जिला-गढ़वा, (झारखंड)
361	सेन्ट्रल बैंक ऑफ इंडिया, कुरपनिया, आनन्द बाजार, कुरपनिया, डाकघर-संडे बाजार, प्रखंड-बेरमो, जिला-बोकारो (झारखंड)
362	सेन्ट्रल बैंक ऑफ इंडिया, एमजीएम, बोकारो शाखा, एमजीएम स्कूल, बोकारो, सेक्टर IV, जिला-बोकारो (झारखंड)
363	सेन्ट्रल बैंक ऑफ इंडिया, एन॰ रोड जमशेदपुर, टिस्को एन गेट, जिला-पूर्वी सिंहभूम (झारखंड)
364	सेन्ट्रल बैंक ऑफ इंडिया, गोविन्दपुर, तिरूपति कॉम्प्लेक्स, जी॰ टी॰ रोड, गोविन्दपुर, डाकघर-गोविन्दपुर जिला-धनबाद (झारखंड)
365	सेन्ट्रल बैंक ऑफ इंडिया, नवहट्टा, ग्राम व पो॰ नवहट्टा जिला-सहरसा (बिहार)
366	सेन्ट्रल बैंक ऑफ इंडिया, पूरब बाजार, जिला-सहरसा (बिहार)
367	सेन्ट्रल बैंक ऑफ इंडिया, सहरसा कॉलेज, जिला-सहरसा (बिहार)
368	सेन्ट्रल बैंक ऑफ इंडिया, ग्राम एवं पो॰ अमहा, जिला-सुपौल (बिहार)
369	सेन्ट्रल बैंक ऑफ इंडिया, डाकघर-बहोरवा, परसा व्हाया पिपरा बाजार, जिला-सुपौल (बिहार)
370	सेन्ट्रल बैंक ऑफ इंडिया, सुखासन, डाकघर-श्रीपुर, व्हाया-खरविट्टा, जिला-सुपौल (बिहार)
371	सेन्ट्रल बैंक ऑफ इंडिया, डाकघर-वेलही, व्हाया-निमली, जिला-सुपौल (बिहार)
372	सेन्ट्रल बैंक ऑफ इंडिया, पुरैनी बाजार, डाकघर-गणेशपुर, जिला-मधेपुरा (बिहार)
373	सेन्ट्रल बैंक ऑफ इंडिया, डाकघर-हरदी, व्हाया गम्हरिया, जिला-सुपौल (बिहार)
374	सेन्ट्रल बैंक ऑफ इंडिया, पंचायत भवन, आलमनगर, जिला-मधेपुरा (बिहार)
375	सेन्ट्रल बैंक ऑफ इंडिया, आशा पैलेस, काली स्थान, जिला-बेगु सराय (बिहार)
376	सेन्ट्रल बैंक ऑफ इंडिया, डाकघर-गौरा, गौरा, व्हाया बरौनी ड्योरी, जिला-बेगुसराय (बिहार)
377	सेन्ट्रल बैंक ऑफ इंडिया, लतौना, त्रिवेनीगंज, जिला-सुपौल (बिहार)

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰
378	सेन्ट्रल बैंक ऑफ इंडिया, बेलारी, डाकघर बेलारी, व्हाया बुधमा, जिला–मधेपुरा (बिहार)
379	सेन्ट्रल बैंक ऑफ इंडिया, इसराइनकला डाकघर – जदुआ पट्टी जिला – मधेपुरा (बिहार)
380	सेन्ट्रल बैंक ऑफ इंडिया, बरौनी, राजेन्द्र रोड, जिला – बेगुसराय (बिहार)
381	सेन्ट्रल बैंक ऑफ इंडिया, अमजदपुर, डाकघर – पिढौली, जिला – बेगुसराय (बिहार)
382	सेन्ट्रल बैंक ऑफ इंडिया, महेशखूंट, केशरी मार्केट, जिला–खगडिया (बिहार)
383	सेन्ट्रल बैंक ऑफ इंडिया, अलीराजपुर शाखा, 20, नगर पालिका मार्ग, अलीराजपुर – 457887 जिला: अलीराजपुर मध्य प्रदेश
384	सेन्ट्रल बैंक ऑफ इंडिया, झाबुआ शाखा, सिटी पोस्ट ऑफिस के पीछे, हंसा लॉज, झाबुआ – 457661 जिला: झाबुआ
385	सेन्ट्रल बैंक ऑफ इंडिया, जामो बाजार शाखा, ग्राम + पोस्ट: जामो बाजार प्रखंड, गोरियाकोठी अनुमंडल: महाराजगंज, जिला: सिवान, डाक सूचकांक 841 413 (बिहार)
386	सेन्ट्रल बैंक ऑफ इंडिया, पंचदेवडी शाखा, ग्राम+पोस्ट: पंचदेवडी, जिला: गोपालगंज, डाक सूचकांक 841 437 (बिहार)
387	सेन्ट्रल बैंक ऑफ इंडिया, डी॰ए॰वी॰ कॉलेज, सिवान शाखा, डी॰ए॰वी॰ कॉलेज परिसर, सिवान, जिला: सिवान डाक सूचकांक 841 226 (बिहार)
388	सेन्ट्रल बैंक ऑफ इंडिया, हसनपुरा शाखा ग्राम: पोस्ट हसनपुरा, हसनपुरा पुल के पास, जिला: सिवान, डाक सूचकांक 841 236 (बिहार)
389	सेन्ट्रल बैंक ऑफ इंडिया, पचलखी शाखा ग्राम: पोस्ट पचलखी, थाना: नौतन, जिला: सिवान, डाक सूचकांक: 841 436 (बिहार)
390	सेन्ट्रल बैंक ऑफ इंडिया, परसा शाखा ग्राम: परसा, पोस्ट: परसा, बाजार, थाना + प्रखंड: एकमा जिला: सारण (छपरा), डाक सूचकांक: 841 220 (बिहार)
391	सेन्ट्रल बैंक ऑफ इंडिया, जामापुर शाखा, ग्राम: जामापुर, पत्रालय: जीरादेई, प्रखंड: जीरादेई, अनुमंडल: सिवान, जिला: सिवान, डाक सूचकांक: 841 245 (बिहार)
392	सेन्ट्रल बैंक ऑफ इंडिया, मालामिर्जा टुकड़ा शाखा, जे॰पी॰ यूनिवर्सिटी कैम्पस, पत्रालय: छपरा जिला: सारण (छपरा) डाक सूचकांक: 841 301 (बिहार)
393	सेन्ट्रल बैंक ऑफ इंडिया, जगदम्ब कॉलेज शाखा, जगदम्ब कॉलेज परिसर, पत्रालय: छपरा जिला: सारण (छपरा) डाक सूचकांक: 841 301 (बिहार)
394	सेन्ट्रल बैंक ऑफ इंडिया, विद्या विकास मंडल कॉलेज शाखा, कॉलेज कॉम्पलेक्स, पेडा, मड़गाव, गोवा 403 601

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰
395	सेन्ट्रल बैंक ऑफ इंडिया, सेंट जेवियर कॉलेज शाखा, अल्टीनो, म्हापसा, जिला: उत्तर गोवा, गोवा 403507
396	सेन्ट्रल बैंक ऑफ इंडिया, कलंगुट शाखा, अलगरवी रीट्रीट, पोरबावाददु, कलंगुट, बरडीझ जिला: उत्तर गोवा, गोवा 403 516
397	सेन्ट्रल बैंक ऑफ इंडिया, नवेली शाखा, कोलमोड अशीष बिल्डिंग, कारवार मडगांव रोड, नवेलीम, सालसेट, जिला: दक्षिण गोवा, गोवा 403 707
398	सेन्ट्रल बैंक ऑफ इंडिया, एनआरआई शाखा, दामोदर बिल्डिंग, गोमंतक निकेतन बिल्डिंग के बाजु में, स्टेशन मार्ग, मडगांव 403 601 सालसेट, जिला: दक्षिण गोवा,
399.	सेन्ट्रल बैंक ऑफ इंडिया, ए॰पी॰एम॰सी॰ शाखा, कृषि उत्पाद बाजार समिति परिसर बेतिया-845438 जिला: पश्चिम चम्पारण फोन: 06254243608 ई-मेल: bmmoti 4099@centralbank.co.in
400.	सेन्ट्रल बैंक ऑफ इंडिया, बरवल शाखा, पोस्ट: बगहा, जिला: पश्चिम चम्पारण-845301 फोन: 06251227750 ई-मेल: bmmoti 28605@centralbank.co.in
401.	सेन्ट्रल बैंक ऑफ इंडिया, चनपटिया शाखा, पोस्ट: चनपटिया, जिला: पश्चिम चम्पारण-845438 फोन: 06254266139 ई-मेल: bmmoti 3605@centralbank.co.in
402.	सेन्ट्रल बैंक ऑफ इंडिया, दलपत विसुनपुर शाखा, पोस्ट: दलपत विसुनपुर, वाया पंचपकडी, जिला: पूर्व चम्पारण-845427 फोन: 06250282233 ई-मेल: bmmoti 3043@centralbank.co.in
403.	सेन्ट्रल बैंक ऑफ इंडिया, देवापुर शाखा, पोस्ट: पंचपकरी, जिला: पूर्व चम्पारण-845427 फोन: 06250250133 ई-मेल: bmmoti 3005@centralbank.co.in
404.	सेन्ट्रल बैंक ऑफ इंडिया, डंकन होस्पीटल शाखा, डंकन होस्पीटल परिसर, रक्सौल, जिला: पूर्व चम्पारण-845305 फोन: 06255220963 ई-मेल: bmmoti 0031@centralbank.co.in
405.	सेन्ट्रल बैंक ऑफ इंडिया, गोरा शाखा, शनीचरी चौक, वाया लौरिया, जिला: पश्चिम चम्पारण-845543 फोन: 06254254243 ई-मेल: bmmoti 2858@centralbank.co.in
406.	सेन्ट्रल बैंक ऑफ इंडिया, कंधवालिया शाखा, स्थान कंधवालिया, पोस्ट: बगाही, जिला: पश्चिम चम्पारण-845106 फोन: 06256264463 ई-मेल: bmmoti 3017@centralbank.co.in
407.	सेन्ट्रल बैंक ऑफ इंडिया, केहुनिया शाखा, हरदिया चौक, नरकटियागंज, जिला: पश्चिम चम्पारण-845455 फोन: 06253242028 ई-मेल: bmmoti 2743@centralbank.co.in
408.	सेन्ट्रल बैंक ऑफ इंडिया, केसरिया शाखा, ब्लॉक रोड: पोस्ट: केसरिया जिला: पूर्व चम्पारण-845412 फोन: 06257269875 ई-मेल: bmmoti 3606@centralbank.co.in

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰
409.	सेन्ट्रल बैंक ऑफ इंडिया, पटनी शाखा, स्थान + पोस्ट: रामगढवा, जिला: पूर्व चम्पारण-845433 फोन: 06255233714 ई-मेल: bmmoti 2794@centralbank.co.in
410.	सेन्ट्रल बैंक ऑफ इंडिया, फेनहारा शाखा, स्थान + पोस्ट: फेनहारा, जिला: पूर्व चम्पारण-845420 फोन: 06259277153 ई-मेल: bmmoti 3387@centralbank.co.in
411.	सेन्ट्रल बैंक ऑफ इंडिया, सिरीनगर शाखा, पोस्ट: डुमरी बाजार, जिला: पश्चिमी चम्पारण-845452 फोन: 06254224322 ई-मेल: bmmoti 3058@centralbank.co.in
412.	सेन्ट्रल बैंक ऑफ इंडिया, तौलाहां शाखा, स्थान + पोस्ट: रामनगर, जिला: पूर्व चम्पारण-845105 फोन: 062596224073 ई-मेल: bmmoti 2886@centralbank.co.in
413.	सेन्ट्रल बैंक ऑफ इंडिया, अग्रणी जिला कार्यालय, पूर्वी चम्पारण, बहुआ टाल, मोतिहारी, जिला: पूर्व चम्पारण-845401 फोन: 06252232793 ई-मेल: idmechamp@centralbank.co.in
414.	सेन्ट्रल बैंक ऑफ इंडिया, अग्रणी जिला कार्यालय, पश्चिमी चम्पारण, लाल बाजार, बेतिया जिला: पश्चिमी चम्पारण-845438 फोन: 06254242311, फैक्स: 06254232261 ई-मेल: idmwchamp@centralbank.co.in
415.	सेन्ट्रल बैंक ऑफ इंडिया, क्षेत्रीय कार्यालय, बहुआ टाल, मोतिहारी, जिला: पूर्व चम्पारण-845401 फोन: 06252232448 ई-मेल:
416.	सेन्ट्रल बैंक ऑफ इंडिया, गोढवा शाखा, स्थान + पोस्ट: गोढवा, जिला: पूर्वी चम्पारण
417.	सेन्ट्रल बैंक ऑफ इंडिया, फतेहपुर शाखा, मच्छरगांवा जिला: पश्चिम चम्पारण
418.	सेन्ट्रल बैंक ऑफ इंडिया अब्बिगेरे शाखा श्री स्कंदा काम्पलेक्स, 'एफ' क्रास, अब्बिगेरे मेन रोड, अब्बिगेरे, बेंगलूरू - 560 090
419.	सेन्ट्रल बैंक ऑफ इंडिया बन्नेरघट्टा शाखा, 383/1ए, हुलिमावू, बन्नेरघट्टा रोड, बेंगलूरू - 560 076
420.	सेन्ट्रल बैंक ऑफ इंडिया एच॰एस॰आर॰ ले आउट शाखा नं॰ 395, 10वीं मेन, 7वां सेक्टर, मुन्नियप्पा कॉम्पलेक्स के पीछे, एच॰एस॰आर॰ ले आउट, बेंगलूरू - 560 102
421.	सेन्ट्रल बैंक ऑफ इंडिया जरगनहल्ली शाखा नं॰1, 1 क्रॉस राजीव गांधी रोड, जरगनहल्ली (जे॰पी॰ नगर), बेंगलूरू - 560 078
422.	सेन्ट्रल बैंक ऑफ इंडिया जयनगर IX ब्लॉक शाखा, आर॰जे॰ आर्केड, नं॰ 1029/41, 27वीं 'ए' मेन, 100 फीट रिंग रोड, 9वां ब्लॉक, जयनगर, बेंगलूरू - 560 041
423.	सेन्ट्रल बैंक ऑफ इंडिया केम्पापुरा हेब्बाल शाखा 26 एवं 29, आर॰एस॰ कॉम्पलेक्स, आंजनेया टेम्पल स्ट्रीट, केम्पापुरा, बेंगलूरू - 560 024
424.	सेन्ट्रल बैंक ऑफ इंडिया कोडिगेहल्ली शाखा, नं॰ 20, केम्पेगौडा नगर रोड, विरूपाक्षपुरा, टेलीकॉम सर्कल के पास, विद्यारण्यापुरा पोस्ट, कोडिगेहल्ली, बेंगलूरू - 560 097

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425.	सेन्ट्रल बैंक ऑफ इंडिया मथिकेरे शाखा 907/6, श्री कॉम्पलेक्स, एम ई एस रिंग रोड, मुत्याल नगर, बेंगलूरू - 560 054
426.	सेन्ट्रल बैंक ऑफ इंडिया आर॰टी॰ नगर शाखा नं॰ 9, डी॰आर॰प्लाझा, दिन्नूर मेन रोड, बेंगलूरू - 560 034
427.	सेन्ट्रल बैंक ऑफ इंडिया विजयनगर शाखा श्री कृष्णा, नं॰ 29, 1 ली मंजील मेन रोड, एम सी ले आउट, विजयनगर, बेंगलूरू - 560 040
428.	सेन्ट्रल बैंक ऑफ इंडिया येलंका शाखा 98 एवं 99 एल आई जी, वेंकटेश्वरा कॉम्पलेक्स, 707, IV फेज, गवर्मेन्ट स्कूल के पास, येलंका न्यू टाऊन, बेंगलूरू - 560 064
429.	सेन्ट्रल बैंक ऑफ इंडिया चर्च ऑफ साउथ इंडिया शाखा, चर्च ऑफ साउथ इंडिया, कौन्सील फॉर चाईल्ड केअर सेन्टर, बेंगलूरू, 26, लावेली रोड, बेंगलूरू - 560001
430.	सेन्ट्रल बैंक ऑफ इंडिया सेन्ट्रल सिल्क बोर्ड शाखा, सी एस बी कॉम्पलेक्स, बी टी एम ले आउट मडीवाला, बेंगलूरू - 560 068
431.	सेन्ट्रल बैंक ऑफ इंडिया सोफिया हाई स्कूल शाखा, 47 पैलेस रोड, बेंगलूरू - 560001
432.	सेन्ट्रल बैंक ऑफ इंडिया विडिया (इंडिया) लिमिटेड शाखा, बेंगलूरू 8/9, माईल, तुमकूर रोड, बेंगलूरू - 560 073
433.	सेन्ट्रल बैंक ऑफ इंडिया इंडियन इंस्टीट्यूट ऑफ हारटिकल्चर रीसर्च, (आई आई एच आर) शाखा, लेक पोस्ट, हेसरघट्टा 560 089 बेंगलूरू ग्रामीण जिला
434.	सेन्ट्रल बैंक ऑफ इंडिया मण्डया शाखा नं॰ 5, 28/1121/3, तीसरा मेन रोड, अशोक नगर, मण्डया, मण्डया जिला-571401
435.	सेन्ट्रल बैंक ऑफ इंडिया तुमकूर शाखा, विजय कॉम्पलेक्स, सोमेश्वरपूरम, मेन रोड, तुमकूर 572102
436.	सेन्ट्रल बैंक ऑफ इंडिया दत्तगल्ली शाखा नं॰ 22/23, कनकदास नगर, नेताजी सर्कल एवं डबल रोड, दत्तगल्ली, मैसूर 570023
437.	सेन्ट्रल बैंक ऑफ इंडिया होसकोटे शाखा, नं॰ 211, नागदे टेम्पल के पास, बस स्टैण्ड रोड, होसकोटे 562114
438.	सेन्ट्रल बैंक ऑफ इंडिया कनकपुरा शाखा, रामनगर जिला 602/655, एम॰जी॰ रोड, रेन्ज फारेस्ट ऑफीस के सामने, कनकपुरा 562117
439.	सेन्ट्रल बैंक ऑफ इंडिया सेन्ट्रल सेरीकल्प ट्रेनिंग एंड रिसर्च इन्स्टिट्यूट (सी एस टी आर आई) शाखा, मैसूर, मानंदवाडी रोड, श्रीरामपुर, मैसूर 570 008
440.	सेन्ट्रल बैंक ऑफ इंडिया सेंट अलॉशियस कॉलेज शाखा, मैंगलुर,लाईट हाऊस हिल, मैंगलुर 575003
441.	सेन्ट्रल बैंक ऑफ इंडिया मडिकेरी शाखा नं॰ 115/81ए, ब्लॉक नं॰ 2, तल मंजिल गौलीबीडी, कोहिनूर रोड, मडिकेरी 571201

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442.	सिंडिकेट बैंक हुणसूर शाखा #3739/1 बी॰एम॰बाई पास रोड हुणसूर जिला : मैसूर राज्य : मैसूर पिन : 571 105
443.	सिंडिकेट बैंक सिद्धार्थ नगर शाखा #147/13 मेन रोड सिद्धार्थ कॉम्पलेक्स सिद्धार्थ नगर जिला : मैसूर राज्य : मैसूर पिन : 570 011

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444.	सिंडिकेट बैंक आदर्श नगर शाखा डी-27-28, राजन बाबू रोड आदर्श नगर राज्य : दिल्ली पिन : 110 033
445.	सिंडिकेट बैंक मॉडल टाउन शाखा शंकर टॉवर्स के-1/1 मॉडल टॉउन-III पोस्ट ऑफिस के पास राज्य : दिल्ली पिन : 110 009
446.	सिंडिकेट बैंक हिम्मतनगर शाखा रतन सागर कॉम्प्लेक्स सहकारी जिंचर रास्ता छापरिया रोड हिम्मतनगर जिला : सबरकांठा राज्य : गुजरात पिन : 383 001
447.	सिंडिकेट बैंक बामैया शाखा C/o ग्राम पंचायत कमिटी हाल बामैया तालुक जिला : पाटन राज्य : गुजरात
448.	सिंडिकेट बैंक पालनपुर शाखा 1,2,3 एच॰के॰ टॉवर्स हनुमान टेकडी आबू हाइवे, पालनपुर जिला : बनासकांठा राज्य : गुजरात पिन : 385 001
449.	सिंडिकेट बैंक प्रतापगढ़ शाखा श्री गोविंदनाथजी हवेली गोपालगंज प्रतापगढ़ जिला : प्रतापगढ़ राज्य : राजस्थान पिन : 312 605
450.	सिंडिकेट बैंक राजसमंद शाखा मेन मार्केट भिलवाड़ा रोड जे॰ के॰ कर्व हाथिनाडा कंकरोली जिला : राजसमंद राज्य : राजस्थान पिन : 313 324
451.	सिंडिकेट बैंक बूँदी शाखा वार्ड नं॰ 25, लंका गेट रोड बूँदी जिला : बूँदी राज्य : राजस्थान पिन : 323 001
452.	सिंडिकेट बैंक श्रीकरणपुर शाखा 5-सी ब्लॉक वार्ड नं॰ 15 ओबीसी के सामने श्रीकरणपुर जिला : श्रीगंगानगर राज्य : राजस्थान पिन : 335 073
453.	सिंडिकेट बैंक बगहा शाखा गांव एवं डाकघर बगहा जिला : सीतामढ़ी राज्य : बिहार पिन : 843 332
454.	सिंडिकेट बैंक बांका शाखा हरेंद मार्केट कटोरिया रोड जिला : बांका राज्य : बिहार पिन : 813 102
455.	सिंडिकेट बैंक बलिहार शाखा ग्राम : बलिहार डाकघर एवं थाना सूरजपुरा बलिहार जिला : रोहतास राज्य : बिहार पिन : 802 226

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456.	सिंडिकेट बैंक बलहा शाखा ग्राम एवं डाकघर बलहा द्वारा पूसा थाना : चकमहेशी जिला : समस्तीपुर राज्य : बिहार पिन : 848 209
457.	सिंडिकेट बैंक बेगुसराय शाखा सत्यवीर शांति प्लाजा हीरालाल चौक आरएसएस बेगुसराय के पास बेगुसराय जिला : बेगुसराय राज्य : बिहार पिन : 851 101
458.	सिंडिकेट बैंक चित्तलोरिया शाखा ग्राम: चित्तलोरिया डाकघर: डियोसंग चित्तलोरिया जिला: देवघर राज्य: झारखंड पिन: 814 112
459.	सिंडिकेट बैंक धोबगामा शाखा ग्राम एवं डाकघर धोबगामा थाना पूसा जिला: समस्तीपुर राज्य: बिहार पिन: 848 125
460.	सिंडिकेट बैंक दौलतपुर चांदी शाखा ग्राम: दौलतपुर चांदी जिला: वैशाली राज्य: बिहार पिन: 844 146
461.	सिंडिकेट बैंक डुमरी शाखा ग्राम: बलिहार डाकघर: खबरा जिला: मुजफ्फरपुर राज्य: बिहार पिन: 843 146
462.	सिंडिकेट बैंक गोड्डा शाखा मेन चौक, गोड्डा जिला: गोड्डा राज्य: झारखंड पिन: 814 133
463.	सिंडिकेट बैंक हंसडीहा शाखा हंसडीहा चौक जिला: दुमका राज्य: झारखंड पिन: 814 145
464.	सिंडिकेट बैंक हरचंदा शाखा ग्राम: हरचंदा डाकघर: पानपुर करियार जिला: मुजफ्फरपुर राज्य: बिहार पिन: 843 146
465.	सिंडिकेट बैंक कंचनपुर शाखा ग्राम: कंचनपुर जलमा चौक डाकघर: लुपुंग ब्लॉक: कटकामसंदी जिला: हजारीबाग राज्य: झारखंड पिन: 825 319
466.	सिंडिकेट बैंक मारपा शाखा ग्राम: मारपा डाकघर: फुलवरिया जिला: सीतामढी राज्य: बिहार पिन: 843 317
467.	सिंडिकेट बैंक मोतीहारी शाखा कचहरी रोड बलुवा चौक मोतीहरी जिला: मोतीहारी राज्य: बिहार पिन: 845 401

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468.	सिंडिकेट बैंक रामपुर महेशपुर शाखा ग्राम एवं डाकघर: रामपुर महेशपुर जिला: समस्तीपुर राज्य: बिहार पिन: 848 130
469.	सिंडिकेट बैंक समस्तीपुर शाखा बीआरबी कालेज के सामने मोहनपुर रोड समस्तीपुर जिला: समस्तीपुर राज्य: बिहार पिन: 848 101
470.	सिंडिकेट बैंक शेखपुरा शाखा मेन मार्केट चांदनी चौक क्रासिंग जिला: शेखपुरा राज्य: बिहार पिन: 811 105
471.	सिंडिकेट बैंक तरौरा शाखा ग्राम: तरौरा डाकघर: पीरबधौना द्वारा: नगरनौसा तरौरा जिला: पटना राज्य: बिहार पिन: 801 305
	स्टेट बैंक ऑफ मैसूर, प्रधान कार्यालय
472.	शाखा प्रबंधक, ए डी बी मण्ड्या नं॰ डी-2/1849/366 मेन बंडीगौडा लेआऊट मंड्या कर्नाटक 571 401
473.	शाखा प्रबंधक, अघालय संतेबाचहल्ली द्वारा अघालया, के आर पेट तहसील मंड्या कर्नाटक 571 436
474.	शाखा प्रबंधक, बेलगुला के आर एस मेन रोड, बेलगुला श्रीरंगपट्टण तहसील मंड्या कर्नाटक 571 606
475.	शाखा प्रबंधक, बेलकवाडि I पी बी नं॰ 1, मेन रोड बेलकवाडी, मलवल्ली तहसील मंड्या, कर्नाटक 571 417
476.	शाखा प्रबंधक, ल्लाले बेल्लाले, पाडंवपुरा तहसील मंड्या कर्नाटक 571 434
477.	शाखा प्रबंधक, बिन्दिगनविले नं॰ 71, बस स्टैंड रोड बिन्दिगनविले, नागमंगला तहसील मंड्या कर्नाटक 571 802
478.	शाखा प्रबंधक, बूकिनकेरे बूकिनकेरे के आर पेट तहसील मंड्या कर्नाटक 571 812
479.	शाखा प्रबंधक, चिनकुरली पी बी नं॰ 1, चिनकुरली पांडवपुरा तहसील मंड्या कर्नाटक 571 455
480.	शाखा प्रबंधक, गुथलु रीजेंट कांप्लेक्स, गुथलु रोड मंड्या मंड्या कर्नाटक 571 403
481.	शाखा प्रबंधक, हाड्ली मेगलापुरा सर्कल, हाडली मलवल्ली तहसील मंड्या कर्नाटक 571 430
482.	शाखा प्रबंधक, हल्लगेरे हल्लगेरे बसरालु होबली मंड्या कर्नाटक 571 146
483.	शाखा प्रबंधक, होललु (बल्लारी) पी बी नं॰ 1, मेन रोड होललू हूविनहडगली, तहसील बल्लारी कर्नाटक 583 217
484.	शाखा प्रबंधक, हों गहल्ली पी बी नं॰ 1, होंगहल्ली श्रीरंगपट्टण तहसील मंड्या कर्नाटक 571 607
485.	शाखा प्रबंधक, कडबल्ली बिन्दगिनविले होब्ली नागमंगला तहसील मंड्या कर्नाटक 571 418
486.	का शाखा प्रबंधक, लमुद्दनदोड्डी नं॰ 145(1), हलगूर रोड भारती नगर, के॰एम॰ दोड्डी मद्दूर तहसील मंड्या कर्नाटक 571 422
487.	शाखा प्रबंधक, कल्कुणी नं॰ 147, स्टेट बैंक रोड, कुल्कुणी मलवल्ली, तहसील मंड्या कर्नाटक 571 424
488	शाखा प्रबंधक, किक्केरी पी बी नं॰ 1, नं॰ 117, मेन रोड किक्केरी के आर पेट तहसील मंड्या कर्नाटक 571 423
489	शाखा प्रबंधक, कोत्तत्ती मण्ड्या-बन्नूर रोड कोत्तत्ती मंड्या कर्नाटक 571 402
490.	शाखा प्रबंधक, क्यातनहल्ली नं॰ 327(1), मेन रोड क्यातनहल्ली पांडवपुरा, तहसील मंड्या कर्नाटक 571 427

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491.	शाखा प्रबंधक, कृष्णराजपेट पी बी नं॰ 1, नं॰ 259 मेन रोड कृष्णराजपेट मंडया कर्नाटक–571 426
492.	शाखा प्रबंधक, मण्डया पी बी नं॰ 1, विश्वेरय्या रोड मण्ड्या मंड्या कर्नाटक–571 401
493.	शाखा प्रबंधक, मेलुकोटे नं॰ 20 मारिगुडी स्ट्रीट मेलुकोटे पांडवपुरा, तहसील मंड्या कर्नाटक–571 431
494.	शाखा प्रबंधक, नेलमंगला नं॰, 1755, मैसूर–बंगलूर रोड नागमंगला मंड्या कर्नाटक–571 432
495.	शाखा प्रबंधक, नगूनहल्ली चन्दगल रोड नगूनहल्ली श्रीरंगपट्टण तहसील मंड्या कर्नाटक–571 805
496.	शाखा प्रबंधक, पालहल्ली पालहल्ली श्रीरंगपट्टण तहसील मंड्या कर्नाटक–571 438
497.	शाखा प्रबंधक, शिवसमुद्रम पी बी नं॰ 1, नं. डी–17, एस एन पी लेन शिवसमुद्रम मलवल्ली तहसील मंड्या कर्नाटक–571 437
498.	शाखा प्रबंधक, श्रीरंगपट्टण पी बी नं॰ 1, नं॰ 994947 होटेल हरिप्रसाद के पास श्रीरंगपट्टण तहसील मंड्या कर्नाटक–571 438
499.	शाखा प्रबंधक, वी सी फार्म पी बी नं॰ 1, वी सी फार्म मंड्या कर्नाटक–571 405

स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर

प्रधान कार्यालय, जयपुर

शाखा जिसे राजभाषा नियम 1976 के नियम 10(4) के अन्तर्गत राजपत्र में अधिसूचित करना है।

500. **कापरेन शाखा**

पता:
पोस्ट–कापरेन
जिला–बूंदी
पिन–323 301
राजस्थान

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰
501.	सीसवाली पता: प्रताप चौक, बस स्टैंड पोस्ट–सीसवाली जिला–बांरा पिन–325206 राजस्थान
502.	तालेडा पता: केसशोराइ पाटन तिराहा जिला–बूंदी पिन–323021 राजस्थान
503.	इन्द्रगढ पता: कम्यूनिटी भवन, वार्ड नं॰ 8 पोस्ट–इन्द्रगढ पिन–323613 राजस्थान
504.	रूपनगढ़ पता: रूपनगढ़ बस स्टैंड के नजदीक पोस्ट–रूपनगढ़ जिला–अजमेर पिन–305814 राजस्थान
505.	अंराई पता: पावर हाउस चौराहा के नजदीक पोस्ट–अंराई जिला–अजमेर पिन–305814 राजस्थान
506.	मिनी सचिवालय, झालवाड़ पता: पोस्ट– झालवाड़ जिला–झालवाड़ पिन–326001 राजस्थान

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰

507. आर॰सी॰पी॰सी॰ झालवाड
पता:
गढ़ झालावाड़ के नजदीक
पोस्ट-झालवाड़
जिला-झालवााड़
पिन-326001
राजस्थान

508. विज्ञान नगर
पता:
कल्पतरु कॉम्पलेक्स
पोस्ट-विज्ञान नगर
जिला-कोटा
पिन-324005
राजस्थान

509. आर॰सी॰पी॰सी॰ सवाई माधोपुर
पता:
एसबीबीजे, बजरंग भवन
पोस्ट-सवाई माधोपुर
जिला-सवाई माधोपुर
पिन-322001
राजस्थान

510. देई शाखा
पता:
नैनवा रोड, कृषि उपज मंडी के पास
पोस्ट-देई
जिला-बूंदी
पिन-323802
राजस्थान

511. कवई शाखा
पता:
गाँव-कवई
पोस्ट-बाराँ
जिला-बाराँ
पिन-325219
राजस्थान

512. सुकार शाखा
पता:
पोस्ट-सुकर
तहसील-बामनवास
जिला-सवाई माधोपुर
पिन-322212
राजस्थान

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰

513. मोतीपुरा चौकी
पता: सीटीटीपी रेजिडेन्शियल कॉलोनी
चौकी मोतीपुरा
तहसील-छाबड़ा
जिला-बाराँ
पिन-325220
राजस्थान

514. मेडीकल कॉलेज, अजमेर
पता:
मेडिकल कॉलेज कम्पाउण्ड
रंघ बड़ी रोड
सहर-कोटा
जिला-कोटा
पिन-324005
राजस्थान

515. आर एस एम ई सी सी, उदयपुर
पता:
प्रथम तल चेतक सर्कल
पोस्ट-उदयपुर
पिन-313001
राजस्थान

516. हिरण मगरी सेक्टर-14
पता:
2 जी ब्लाक
सामुदायिक केंद्र के सामने
हिरण मगरी सेक्टर-4
उदयपुर, राजस्थान

517. प्रतापगढ़
पता:
महात्मा गाँधी रोड
प्रतापगढ़
पिन-312605
राजस्थान

518. सेथीं शाखा
पता:
ए-23 बापु नगर, मुख्य सड़क
सेंथी (चितौड़गढ़)
पिन-312001
राजस्थान

519. वस्सी शाखा
पता:
जिला-डुगरपुर
पिन-314036
राजस्थान

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰

520. सावला शाखा

पता:
बस स्टैंड के पास
उदयपुर रोड, सावला
पिन-314022
राजस्थान

521. बिछवाडा शाखा

पता:
छपिया काम्पलेक्स
मुख्य बाजार बिछवाडा
जिला-डूंगरूपुर
पिन-314801
राजस्थान

522. कानोड़ शाखा

पता:
उदयपुर रोड
पोस्ट-कानोड झाडोला
पिन-313603
राजस्थान

523. लकड़वास शाखा

पता:
जिला-उदयपुर
पिन-313012
राजस्थान

524. रास्मेक-कम-सार्क

पता:
भीलवाड़ा
जिला-भीलवाड़ा
पिन-311001
राजस्थान

525. कुरुक्षेत्र शाखा
पता:
एस सी ओ 66, सेक्टर 17
जिला-कुरुक्षेत्र
पिन-136118
राज्य-हरियाणा

राजभाषा नियम 1976 के नियम 10(4) के अंतर्गत भारत सरकार के राजपत्र में अधिसूचित किए जाने वाले इंडियन बैंक के कार्यालयों/शाखाओं की सूची

अंचल कार्यालय-चंडीगढ़

526. इंडियन बैंक
टैगोर नगर शाखा
1105, किरण विला
टैगोर नगर - बी
सिविल लाइन,
लुधियाना - 151505
जिला - लुधियाना

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰

527. इंडियन बैंक
फतेहगढ़ नौबाद शाखा
द्वारा - गुरू काशी विश्वविद्यालय
सरदूलगढ़ रोड
तलवंडी साबो फतेहगढ़ नौबाद 151302
जिला - बठिंडा (पंजाब)

528. इंडियन बैंक
जुझार नगर शाखा
39 वेस्ट के सामने
मलोया रोड
गांव: जुझार नगर 160014
बेहलोपुर
जिला: मोहाली (पंजाब)

529. इंडियन बैंक
मानसा शाखा
नीम वाली गली
मानसा - 151505
जिला - मानसा
पंजाब

530. इंडियन बैंक
समराला शाखा
एम जी कम्प्लेक्स के सामने
खन्ना रोड
समराला 141114
जिला - लुधियाना
पंजाब

531. इंडियन बैंक
मोरिंडा शाखा
277-278 वार्ड नं॰ - 8 रेलवे रोड
मोरिंडा 140101
जिला - रूपनगर
पंजाब

532. इंडियन बैंक
दोराहा शाखा
अजैब सिंह कॉम्पलेक्स
फ्लाइ ओवर के सामने
जी टी रोड
दोराहा 136 118
जिला - लुधियाना
पंजाब

533. इंडियन बैंक
एस॰सी॰ओ॰: 244-245
(प्रथम एवं द्वितीय तल)
सैक्टर - 12
करनाल - 132001 (हरियाणा)

क्र॰ सं॰	शाखा का नाम एवं शाखा का पता कोड नं॰
534.	इंडियन बैंक आइ एम टी मानेसर शाखा शोरूम : 4-5-7-8, रहेजा ग्राउंड फ्लोर, फ्रंट साइड आइ एम टी मानेसर - 122050 जिला गुड़गांव (हरियाणा)
535.	इंडियन बैंक खांडसा रोड, शाखा चौहान कमर्सियल कम्प्लेक्स हिरो होंडा चौक के पास खांडसा रोड गुड़गांव - 122001 (हरियाणा)
536.	इंडियन बैंक सुशांत लोक शाखा जी - 3, विपुल स्कवेयर ब्लाक बी, फेस - 1 सुशांत लोक गुड़गांव 122002 (हरियाणा)
537.	इंडियन बैंक सेक्टर - 17, गुड़गांव शाखा 580 हाउसिंग बोर्ड कालोनी सैक्टर - 17 ए मार्केट गुड़गांव 122001 (हरियाणा)
538.	आन्ध्रा बैंक दम्मईगुडा शाखा दुर्गा एस्टेट, दीप्ति श्रीनगर, मदीनागुडा, सेरिलिंगमपल्ली मंडल, रंगारेड्डी जिला, हैदराबाद - 500 049
539.	आन्ध्रा बैंक हस्तिनापुरम शाखा प्लॉट नं॰ 8, सर्वे नं॰ 30/2, 3 एवं 4, सागर रिंग रोड, हस्तिनापुरम हैदराबाद - 500 079
540.	आन्ध्रा बैंक भाग्यनगर शाखा वंदना आर्केड, द॰ नं॰ 2-28-298/8एवं 2-28-298/8/1, भाग्यनगर कुकटपल्ली, हैदराबाद 500 072
541.	आन्ध्रा बैंक मौला-अली शाखा 40-52/4, मौला-अली, हैदराबाद - 500 040
542.	आन्ध्रा बैंक के वी एच बी कॉलोनी शाखा प्लॉट नं॰ 19 एवं 20, तीसरा फेस, कुकटपल्ली, हैदराबाद -500 072
543.	आन्ध्रा बैंक नादरगुल शाखा नादरगुल गाँव, सरूरनगर मंडल, हैदराबाद - 501 510
544.	आन्ध्रा बैंक चेवेल्ला शाखा एम बी एन आर कॉम्प्लेक्स, मेइन रोड, चेवेल्ला, रंगारेड्डी जिला - 501 503
545.	आन्ध्रा बैंक नानकरामगुडा शाखा आन्ध्रा बैंक एपेक्स कॉलेज कैम्पस, प्लॉट नं॰ 27-29, फाइनैन्शियल डिस्ट्रिक्ट, नानकरामगुडा, हैदराबाद - 500 032
546.	आन्ध्रा बैंक चौटुप्पल शाखा द॰ नं॰ 5-390, मुख्य रस्ता, वौटुप्पल - 508252
547.	आन्ध्रा बैंक चिट्याला शाखा म॰ नं॰ 8-150 पुलिस स्टेशन के सामने चिट्याला - 508114

MINISTRY OF FINANCE
(Department of Financial Services)
New Delhi, the 24th January, 2013

S.O. 1995.—In pursuance of sub-Rule(4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976 (as amended 1987) the central Government hereby notifies following branches of Banks under the control of Department of Financial Services, M/O Finance, whereof more than 80% officers/staffs have acquired working knowledge of Hindi.

S.No.	Name of Banks	Naumber of branches
1.	Union Bank of India	218
2.	Indian Oversees Bank	120
3.	Central Bank of India	103
4.	Syndicate Bank	30
5.	State Bank of Mysore	28
6.	State Bank of Bikaner & Jaipur	26
7.	Indian Bank	12
8.	Andhra Bank	10
	Total	**547**

[No. 11016/3/2013-Hindi]
MIHIR KUMAR, Director (O.L.)

UNION BANK OF INDIA

Official Language Implementation Division, Central Office, Mumbai

Branches/Offices recommended for notification under Official Language Rule 10(4)

Name of the Regional Office	No.	Name and Address of Branch/Office
Regional Office, Delhi (South)	1.	Union Bank of India Pataudi Branch House No. 1 Ward No. 6, Baba Attawala Chowk, Pataudi Haili Mandi Road, Gurgaon 122504
	2.	Union Bank of India Bhondasi Branch Village Bhondasi Dist. Gurgaon 122102
	3.	Union Bank of India Ujina Branch P.O. Ujina, Dist Mewat, Haryana
Regional Office, Delhi (North)	4.	Union Bank of India Bhorgarh Branch House No. 7/2, Railway Crossing, Narela, New Delhi 110040
	5.	Union Bank of India Gokalpur Branch A-51, Gokalpur P.O. Gokalpur, New Delhi 110094
	6.	Union Bank of India Union Loan Point West Vihar Branch B-2/15, Pashchim Vihar Delhi 110063
Region Office, Jaipur	7.	Union Bank of India Dooni Branch Panchayat Bhavan Village and Post Dooni Tehsil-Deoli District-Tonk Rajasthan 304802
	8.	Union Bank of India Neemrana Branch Village and Post Neemrana Tehsil Behrorr, District Alwar, Rajasthan, Pin Code 301 705
	9.	Union Bank of India Liri Branch Village and Post LIRI, Tehsil Peesangan District Ajmer, Rajasthan, Pin Code 305 203
Regional Office, Jaipur	10.	Union Bank of India Baghsuri Branch Village and Post Bagsuri Tehsil Nasirabad, District Ajmer Rajasthan, Pin Code 305401
Regional Office, Karnal	11.	Union Bank of India Union Loan Point, Faridabad, Branch SCO-60, HUDA Market Sector-7, Faridabad, Dist. Faridabad 121001 (Haryana)
	12.	Union Bank of India Sector-3, Karnal SCO-16, Sector-3, Karnal Dist. Faridabad 132001 (Haryana)
Regional Office, Azamgarh	13.	Union Bank of India Sameda Branch (Fi Branch) Village and Post Sameda District-Azamgarh, Pin Code 276128
	14.	Union Bank of India Devara Zadid Branch (Fi Branch) Village and Post Devara Zadid *Via* Maharajganj, Dist. Azamgarh Pin Code 276137
	15.	Union Bank of India Mahul Branch Village and Post Mahul District-Azamgarh, Pin Code 223225
	16.	Union Bank of India Tanda Branch Village and Post Tanda District Ambedkar Nagar Pin Code 224 190
	17.	Union Bank of India Devagaon Branch Village and Post Devgaon District Azamgarh, Pin Code 276202
	18.	Union Bank of India Mittupur Branch Village and Post Mittupur Block Jahanganj Dist., Jahanaganj, Azamgarh Pin 276131
	19.	Union Bank of India Kohada Branch Village and Post Kohada Block Pawai, District Azamgarh Pin 276288

Name of the Regional Office	No.	Name and Address of Branch/Office
Regional Office, Azamgarh	20.	Union Bank of India Jokahara Branch Village and Post Jokahara Block Haraiya, District Azamgarh Pin 276136
	21.	Union Bank of India Bhakhara Branch Block Phoolpur Village and Post Bhakhara District Azamgarh, Pin 223226
	22.	Union Bank of India Thatheri Bazar Mohalla No. 10, Main Road, Saraimeer, Nizamabad, Dist. Azamgarh Pin 276305
Region Office, Gorakhpur	23.	Union Bank of India Barhaj Branch Station Road, AT & Post Barhaj Dist Deoria 274601 (U.P.)
	24.	Union Bank of India Harraiya Branch Samratnagar, Main Market At & Post Harraiya Dist Basti 272 155 (U.P.)
Regional Office, Patna	25.	Union Bank of India Baxar Branch Thatheri Bazar, Buxar Distt. Rohtas, Bihar, Pin Code 821115
	26.	Union Bank of India Sasaram Branch Near Sahu Talkies G.T. Road, Sasaram Dist. Sasaram, Bihar, Pin Code 802101
	27.	Union Bank of India Sabour Road Br. Bhagalpur Tilka Manjhi Hatia Road Distt. Bhagalpur, Bihar, Pincode 812001
	28.	Union Bank of India Madhubani Branch Near Head Post Office Main Road, Distt. Madhubani, Bihar, Pincode 847227
	29.	Union Bank of India F.I. Branch Dhutauli At and Post Dhutauli Near Malpa Chawk, *Via* Chautham Distt. Khagaria, Bihar, Pincode 851201
Regional Office, Patna	30.	Union Bank of India F.I. Branch Ajnaul Village Bhatgama Mansoor Chak Road Post Dal Singh Sarai Dist Samastipur, Bihar Pin 848114
	31.	Union Bank of India F.I. Branch Shambhupatti Village and Post Shambhupatti Dist. Samastipur, Bihar Pin 848129
	32.	Union Bank of India F.I. Bishunpur Harnarain Branch Village Basouli Himmat Singh Post Mahpur, Dist Muzaffarpur, Bihar, Pin 843103
	33.	Union Bank of India F.I. Branch Labhgaon Branch Village and Post Labhgaon Dist. Khagaria, Bihar, Pin 851204
	34.	Union Bank of India F.I. Branch Pitaunjhia Branch Village and Post Pitaunjhia Dist. Khagaria, Bihar, Pin 843117
Regional Office, Bhopal	35.	Union Bank of India Bareilly Branch 1, Bhutada Colony, J.J. Road, Bareilly, Raisen (M.P.)
Regional Office, Indore	36.	Union Bank of India Nanakheda Branch 13/4-C Block, Mahakal Vanijya Kendra VIP Road, Nanakheda Ujjain (M.P.) 456010
	37.	Union Bank of India Specialised Financial Inclusion Branch Bada Bangarda, Post Palakhedi Distt. Indore (M.P.) 453112
Regional Office, Indore	38.	Union Bank of India Piplyakumar Branch S.S. Aangan 90-91 Deep Palace Colony Village: Piplyakumar Distt. Indore (M.P.) 452010

Name of the Regional Office	No.	Name and Address of Branch/Office
Regional Office, Raipur	39.	Union Bank of India Bijapur Branch Main Road, (In front of HP Petrol Pump) Bijapur Distt. Bijapur (C.G.) 494444
	40.	Union Bank of India Dantewada Branch Near Maa Danteshwari Temple Main Road, Dantewada (C.G.) 494449
	41.	Union Bank of India Jashpur Nagar Branch Old Palace, B.S. Market, Main Road, Jashpur (C.G.) 496331
	42.	Union Bank of India Baikunthpur Branch Baisagar Pare, Behind Bank of India Baikunthpur, Distt. Koriya (C.G.) 497625
	43.	Union Bank of India Financial Inclusion Branch Dumartarai Main Road, Dumartarai, Distt. Raipur (C.G.)
	44.	Union Bank of India Narayanpur Branch Main Road, Near Jai Stambh Narayanpur (C.G.) 494661
Regional Office, Reewa	45.	Union Bank of India Amarpatan Branch 128/2, Nagar Panchayat Road Shubhas Chowk, Amarpatan, Distt. Satna Madhya Pradesh 495775
	46.	Union Bank of India Panna Branch 13, Near Shashikiya Grih Nirman Sansthan, B.T.I. Road, Distt. Panna Madhya Pradesh 488001
	47.	Union Bank of India Anuppur Branch Ward No. 7, Near Amarkantak Tiraha, Anupur Madhya Pradesh 484224
Regional Office, Reewa	48.	Union Bank of India Transportnagar Satna Branch 2/1, Transport Nagar, Satna Rewa Road, Satna, Madhya Pradesh 485001
	49.	Union Bank of India Atraila Branch At post Atraila Tehsil Teothar Distt. Rewa Madhya Pradesh 485001
	50.	Union Bank of India Rahat Branch 241, Gram Rahat, Post Rahat, Rewa 484446
	51.	Union Bank of India Tendua Branch Rewa Road, Gram Tendua, Post Padkhuri, Distt. Sidhi 486669
	52.	Union Bank of India Bagaiya Branch Panchayat Building, Rest House Gram, Bagaiyan, Tehsil, Chitrangi, Distt. Singrauli 486001
Regional Office, Allahabad	53.	Union Bank of India Kurmaicha Branch G.T. Road, Kurmaicha, Distt. Sant Ravidas Nagar (Bhadohi) Uttar Pradesh 211003
	54.	Union Bank of India Baraut Branch Post Baraut, Block Handia, Distt. Allahabad U.P. 221502
	55.	Union Bank of India Chhatrapati Shahuji Maharaj Nagar Gauriganj Branch Distt. Chhatrapati, Shahuji Maharaj Nagar, Amethi, U.P. 227409
	56.	Union Bank of India Bina Branch Northern Coalfields Ltd., Bina Project, Distt.: Sonbhadra. U.P. 231220 Regional Office, Allahabad
	57.	Union Bank of India Shantipuram Branch G-2, Gohri Road, Shantipur, Fafamau, Distt. Allahabad, U.P. 211013

Name of the Regional Office	No.	Name and Address of Branch/Office
	58.	Union Bank of India Agiuna Branch Rizvi Institute and Technology, Agiuna, Manjhanpur, Distt. Kaushambi, U.P. 212207
	59.	Union Bank of India Jamunipur Branch Post Modh, Distt. Sant Ravidas Nagar, U.P. 221406
	60.	Union Bank of India Kaulapur Branch Near Rajpat Dhaba, Post Gopiganj, Distt. Sant Ravidas Nagar, U.P. 223103
	61.	Union Bank of India Veerampur Branch Block Abhauli Distt. Sant Ravidas Nagar, U.P. 221308
	62.	Union Bank of India Bhurki Branch Vikas Bhavan, Distt. Head Quarter, Post Gyanpur, Distt.Sant Ravidas Nagar, U.P. 221304
	63.	Union Bank of India Natwan Aurangabad Branch Post Khamariya, Distt. Sant Ravidas Nagar, U.P. 221306
	64.	Union Bank of India Mahjuda Bazar Branch Post Bhori,Distt. Sant Ravidas Nagar, U.P. 221404
Regional Office, Kanpur	65.	Union Bank of India Gulamau (F.I.) Branch Gram & Post Gulamau Block Bhavan, Distt. Hardoi, Pin 241001
Regional Office, Lucknow	66.	Union Bank of India Bhinga Branch Mohalla Tandawa, Post Bhinga 271831
	67.	Union Bank of India Sector Q Branch Saraswati Vidya Mandir Sector Q, Alliganj, Lucknow 226024
	68.	Union Bank of India U. P. State Agro Branch U.P. Agro Industrial Corporation Vidhan Sabha Marg, Lucknow 226001
	69.	Union Bank of India U.P. State Sugar Corporation Branch Vipin Khand,Gomati Nagar, Lucknow 226010
	70.	Union Bank of India 2, Batalian PAC Sitapur Branch PAC, Lucknow Road, Sitapur 261001
	71.	Union Bank of India Laharpur Branch Riyaz Market, Main Mazashah Crossing Laharpur, Sitapur 260135
	72.	Union Bank of India Sidhouli Branch Sumandapam Marriage Hall Sidhouli, Sitapur,
	73.	Union Bank of India Aashiayana Branch M-1/A, Sector I Aashiyana, Lucknow 226012
	74.	Union Bank of India Sector O Branch City Montessory School Sector O, Aliganj Lucknow 226024
	75.	Union Bank of India Vibhuti Khand Branch Vibhuti Khanad, Near Mantri Awas, Gomati Nagar, Lucknow 226010
Regional Office, Lucknow	76.	Union Bank of India Kusmaha Branch Village & Post Kusmaha Faizabad Akarpur Road, Faizabad 224135
	77.	Union Bank of India 32, Batalian PAC Lucknow Branch 32, Batalian PAC Alambagh Lucknow 226005
	78.	Union Bank of India Hardoia Branch CPL Inter College, Hardoia, Adampur, Lucknow

Name of the Regional Office	No.	Name and Address of Branch/Office
	79.	Union Bank of India Moura Branch Santha Crossing, Dubagga Mall Road, Charak Institue, Lucknow 227107
	80.	Union Bank of India Kuchera Branch Kuchera Bazar, Faizabad Jagdishpur Road, Faizabad 224158
Regional Office Dehradun	81.	Union Bank of India Union Loan Point Branch Industrial Area, Near Indresh Hospital Patel Nagar, Uttarakhand 248001
	82.	Union Bank of India Ghansali Branch Shah Bhawan, Chamiyala Road, Distt. Tehri Garhwal, Uttatrakhand
	83.	Union Bank of India Badasi Grant Branch Post Badasi Grant, Block Raipur Tehsil Dehradun Sadar District Dehradum 248008
Regional Office Jabalpur	84.	Union Bank of India TFRI Branch Village Neemkhera Post RAFRC Mandla Road, Jabalpur 482021
	85.	Union Bank of India Waraseoni Branch Katangi Raod, Wara Seoni 481331
	86.	Union Bank of India Tewar Branch Bheraghat Road, Tewar Jabalpur 482001
Regional Office, Ranchi	87.	Union Bank of India Kandra Branch Guru Govind Singh Educational Societies Technical Campus Kandra, Chas, Distt. Bokaro, Jharkhand Pin 827004
	88.	Union Bank of India Jamtara Branch 204, New Towen, Jamtara, Distt. Jamtara, Jharkhand, Pin 815351
	89.	Union Bank of India Chas Branch 564150 Rajlakshmi Tower Bypass Road, Chas post-Chas, Bokaro Dist. Bokaro, Jharkhand Pin 827013
	90.	Union Bank of India Chandwa Branch Main Road, Chandwa Dist. Latehar, Jharkhand Pin 827013
	91.	Union Bank of India Chatra Branch -564567 Sushila Complex, Gudri Bazar Chatra Gaya Road Distt. Latehar, Jharkhand Pin 829203
	92.	Union Bank of India ULP, Jamshedpur Branch 1st Floor, Kamani Center Bishtupur, Jamshedpur, Distt. East Singhbhum Jharkhand 831001
Regional Office Gazipur	93	Union Bank of India Karhiya Branch Village & Post Pakhanpura, Michati District Ghazipur Pin Code 233227
	94.	Union Bank of India Yuvrajpur Branch Village & Post Yuvrajpur Block Reotipur, Tahsil Sadar District Ghazipur, Pin 232332
	95.	Union Bank of India Kamupur Branch Village & Post Kamupur Block Barchavar, Tahsil Barchavar District Ghazipur, Pin 232229
	96.	Union Bank of India Matsa Branch Village & Post Jeevpur, Block Zamania, Tahsil Mohammadabad District Ghazipur, Pin 232340
	97.	Union Bank of India Kuchaura Uparvar Branch Village & Post Kuchaura Uparvar Block Karanda, Tahsil Sadar District Ghazipur, Pin 232224

Name of the Regional Office	No.	Name and Address of Branch/Office
	98.	Union Bank of India Nari Pachdewara Branch Village & Post Nari Pachdewara Branch Block Deokali, Tahsil Sadar District Ghazipur, Pin 233002
	99.	Union Bank of India Arakhpur Branch Village & Post Arakhpur Block Birano, Tahsil Sadar District Ghazipur, Pin 233005
	100.	Union Bank of India Sauri Branch Village & Post Sauri Block Manihari, Tehsil Saidpur District Ghazipur, Pin 275205
	101.	Union Bank of India Padumpur Ramrai Branch Village & Post Padumpur Ramrai Block Jakhania, Tehsil Jakhania District Ghazipur, Pin 275203
	102.	Union Bank of India Sarahula Branch Village & Post Sarahula Block Reotipur, Tahsil Zakhania District Ghazipur, Pin 232326
	106.	Union Bank of India Birpur Branch Village & Post Birpur Block Bhanwarkol, District Ghazipur Pin 233231
Regional Office, Agra	104.	Union Bank of India BCS Agra Branch 4 West, Govind Nagar, Bhartiya Charm Udyog Sangh, Saket, New Shahgang, Distt. Agra, U.P. 282010
	105.	Union Bank of India Shaheed Nagar Branch Near Raipur Chungi, Shamshabad Road Agra, U.P. 282007
	106.	Union Bank of India Vikas Bhawan Dabarai Branch New Collectorate Premises Vikas Bhawan, Shikohabad Road, Dabarai, Distt Firozabad, U.P. 283203
	107.	Union Bank of India Kosikalan Branch Nandgaon Road, Before Railway Station, Mathura, U.P. 281403
	108.	Union Bank of India Chandausi Branch Chandausi Bal Vidya Mandir Munsif Marg, Bhimnagar, U.P. 202412
	109.	Union Bank of India F.I. Paintha Branch Paintha, Block Govardhan, Distt. Mathura, U.P. 281502
	110.	Union Bank of India Service Branch Agra 1st Floor, Friendswasan Plaza, Sanjay Place, Agra, U.P. 282002
	111.	Union Bank of India Shikohabad Branch Rukanpur Before Adarsh Cinema, Manpuri Road, Distt. Firozabad 205135
Regional Office, Ahmedabad	112.	Union Bank of India Nagvasan Branch At Nagvasan, Post Nagvasan Taluka Sidhpur, Distt. Patan 384151, Gujarat
	113.	Union Bank of India Kujad Branch Opp. Datar Chamber Kathlal High Way Tluka: Dascroi Distt., Ahmedabad 382 430 State Gujarat
Regional Office, Rajkot	114.	Union Bank of India Jamkhambaliya Branch Rajada Shopping Centre Jodhpur Gate, Jamkhambaliya Distt. Jamnagar 361305
	115.	Union Bank of India Gondal Branch Shop No. 37, Kailash Complex 'A' Wing, Near Gundala Gate, Opp. Gundala Petrol Pump, Gondal, Distt. Rajkot, Gujarat 360311
	116.	Union Bank of India Jasdan Branch Geeta Nagar, Near Khadi Bhavan, Khanpur Road, Jasdan, Distt. Rajkot, Gujarat 360050

Name of the Regional Office	No.	Name and Address of Branch/Office
	117.	Union Bank of India Pipalva Branch Near bus stand, Village & Post-Pipalva Dist. Junagadh, Gujrat
	118.	Union Bank of Inida Kadukka (FI) Branch Navratri Chowk, Village. post Kadukka Via Lilapur, Distt. Rajkot Pin 360050
	119.	Union Bank of India Ramparvekra Branch Sri Vekra Swaminarayan Mandir Village Ramparvekra Dist.-Kutch, 370445
Regional Office, Nasik	120.	Union Bank of India Brahamanwada (Financial Inclusion) Branch Tahsil Sinnar (Via Nasik Road) Distt. Nasik, Maharashtra 422109
	121.	Union Bank of India Wadi Budruk Branch Shop No. 23 to 25, 40 & 41 Suman Heights, Phase II, Knorak Vihara, Pharade Nagar, Wadi (Budruk), Tal. & Distt. Nanded Maharashtra 431605
	122.	Union Bank of India Raver Branch Shop No. 101, 102, 103 & 104 & 105 Chhoriya Market, Raver, Th. Raver, Distt. Jalgaon
Regional Office, Kolhapur	123.	Union Bank of India Mahadwar Road Kolhapur Branch Binkhambi Ganesh Mandir Mahadwar Road, Kolhapur 416412
	124.	Union Bank of India Mohol Branch At Post Mohol, Tal. - Mohol Dist.-Solapur (Maharashtra) Pin 413307
	125.	Union Bank of India Market Yard, Sangli Branch Opp. Vasantdada Market, Market Yard, Sangli Distt .Sangli (Maharashtra) Pin 416416
	126.	Union Bank of India Kedgaon Branch House No. 410, Gate No. 78, Tal. Karnataka, Distt. Solapur Pin 413 202
Regional Office, Surat	127.	Union Bank of India Specialised Financial Inclusion Branch At Post Mandav Khadak, Taluka Chikhli, Distt. Navsari, Pin 396060
Regional Office, Mumbai (W)	128.	Union Bank of India Nallasopara East Branch Shop No. 4, 5, 6 Opp. Jay Vijay Nagar 100ft. Vasai Nallasopara Link Road Nallasopara (East), Distt. Thane 401209 Maharashtra
Regional Office, Mumbai (S)	129.	Union Bank of India Bandra (East) Branch Renuka Co. Op. Hsg. Soc. Ltd. Behind Gurunanak Hospital Bandra (East), Mumbai 400 051
Regional Office, Mumbai (N)	130	Union Bank of India Kawad Khurd (Finan. Inclu.) Branch Post Angoan, Bhiwandi-wada Road, Taluka Bhiwandi, Pin 421302
	131.	Union Bank of India Union Loan Point Kharghar Branch Shop No. 1-4, Plot No. 7 & 18 Daffodils, Sector No. 19 Kharghar, Navi Mumbai, Pin 410210
	132.	Union Bank of India Kelavane Branch H.No. 722, At Post Kelavane Taluka: Panvel, Distt. Raigarh Pin 410206
	133.	Union Bank of India Sanpada Branch Shop No. 14-15, Akhurath Co.Op.Hsg.Soc., Plot No. 11, Sector-14, Near Pam Beanch Road, Vashi, Sanpara, New Mumbai 400705
	134.	Union Bank of India Luiswadi Branch Ratna Umed Residency Umed Nagar, Pipe Line Road, Luiswadi, Thane (West) 400604

Name of the Regional Office	No.	Name and Address of Branch/Office
	135.	Union Bank of India Station Road Chembur (West) Branch Swastik Pride, Ground Floor, D.K. Sandu Marg, Chembur (West) Mumbai 400 071
	136.	Union Bank of India Railway Station Thane (West) Branch Gala No. 15, 16, Ground Floor Paradise heights, Shivaji Path, Thane (West) 400 602
	137.	Union Bank of India New Panvel Branch Gala No. 16 to 19, Sri Darshan Co. Op. Hsg. Soc., Sector 9, Plot No. 34, Khanda Colony, New Panvel (West) Navi Mumbai 410 206
Regional Office, Nagpur	138.	Union Bank of India Kandri (Kanhan) Branch Post Kandri (Kanhan) Taluka Parshivani Nagpur-Jabalpur Highway, Dist. Nagpur 441401
	139.	Union Bank of India Tembhurkheda Branch (F.I.) Post Tembhurkheda, Taluka Warud Dist.-Amravati 444911
Regional Office, Baroda	140.	Union Bank of India Clearing House & MICR CPC Branch Shantinath Complex, Mayfair Road, Opp. Union Bank Anand Dist. Anand, Gujarat Pin 385 001
	141.	Union Bank of India Manjusar Branch 115/116, GIDC Savli Village Manjusar, Gujarat, Pin 385 001
	142.	Union Bank of India Karelibaug Branch Shrusti Avenue, Shop No. 1-4 Opp. Amrapali Complex Water Tank Road, PO Karelibagh Dist. Vadodara
	143.	Union Bank of India Chhota Udepur Branch House No. 5/704 Vikas Path, Near Kusum Sagar, Dist. Vadodara 391165
	144.	Union Bank of India Narsanda Branch At Post Narsanda, Tal. Nadiad, Dist. Kheda, Gujarat 387345
	145.	Union Bank of India Manjalpur Branch Ground Floor, Hansa Party Plot Vrajdham Mandir Road, Manjalpur, Dist. Baroda, Gujarat 390011
	146.	Union Bank of India Latipura Branch At Post Latipura, Tehsil Padra Dist Vadodara, Gujarat 391 440
	147.	Union Bank of India Sansrod Branch Kamal Said Residence Near Brahmin Falia, Dist. Baroda 392220, Gujarat
Regional Office, Belgaum	148.	Union Bank of India MICR Branch Bankers Clearing House, 1049/B2, Khanapur Road, (Opp. Reliance Petroleum), Tilakwadi Belgaum 590006 Karnataka
Regional Office, Hyderabad	149.	Union Bank of India Survey of India Branch Survey of India Office Complex Uppal Road, Hyderabad 500039 (Andhra Pradesh)
	150.	Union Bank of India Gayatrinagar Branch Plot No. 3, Gayatrinagar X Road, Gayatrinagar, Karmanghat, Hyderabad 500 097 (Andhra Pradesh)
	151.	Union Bank of India Rudraram Branch Gitam Univertsity Campus, Rudraram Village, Mandal Patancheru, Dist. Medak (AP.), Pin Code 502 329

Name of the Regional Office	No.	Name and Address of Branch/Office
	152.	Union Bank of India Ambala Branch H.No. 6-4/3, Sriramulapalli, Village- Ambala, Mandal-Kamlapur, Dist. Karim Nagar, Andhra Pradesh-505102
	153.	Union Bank of India Annaram Branch H.No. 4-67, Main Road, Opp. Grampanchayat, Village-Annaram, Mandal-Manakonduru. Dist.-Karimnagar, Andhra Pradesh-505469
Regional Office, Vijaywada	154.	Union Bank of India Mangalgiri Branch No. 1-643, First Floor, Gautham Buddha Road, (Main Road), Mangalgiri-522 503 Gunnturu Dist A.P.
	155.	Union Bank of India Medepalli Branch Door No. 2-39, Near Hanuman Temple, Medepalli 507158, Mudigonda Mandal Dist. Khammam, A.P.
	156.	Union Bank of India Baswapuram Branch No. 1-22, Kudumuru Bazara, Baswapuram 507318, Chintakani Mandal, Dist. Khammam, A.P.
	157.	Union Bank of India Kondaveedu Branch Village Edlapadu Mandal Gunturu 522529 A.P.
	158.	Union Bank of India Sattenapalli Branch Door No. 18-7-36, Surya Talkies Road (Post & Mandal) Sattenapalli 522 403 Dist. Gunturu, Andhra Pradesh
	159.	Union Bank of India Devara Palli Branch Door No. 4-131, Main Road, P.O. Devrapalli, Kovvuru Road, Devarapalli 534313, W. Godavari, Dist. A.P.
	160.	Union Bank of India Maruteru Branch Door No. 5-91, Post & at Maruteru, TP Gudem-Palakol Road, Maruteru 534 122, Penumantra Mandal, W. Godavari, Dist. A.P.
	161.	Union Bank of India Jangareddi Gudem Branch Door No. 5-2-29/2, Kovvuru Road, KK Complex, Near Ganganamma Temple, Jangareddi Gudem 534 447 W. Godavari, A.P.
	162.	Union Bank of India Pidugurlla Branch Door No. 7-4-07, Vigneswara Complex, Main Road, (Post & Mandal), Pidugurlla 522413, Dist. Gunturu, Andhra Pradesh
	163.	Union Bank of India Thiruvur Branch Door No. 5-147, College Road Near Bose Bomma, Dev. Block Thiruvuru 521235 Distt. Krishna, Andhra Pradesh 521235
	164.	Union Bank of India Budhwar Market Branch Door No. 16-2-207, P.P. Road, Budhwar Market, Bhimavaram 534201 W. Godawari, Dist. A.P.
	165.	Union Bank of India Narsarao Pet Branch Door No. 9-9-44, Bank Street, Arandal Pet, Narsarao Pet 522 601. Gunturu Dist. A.P.
Regional Office, Visakhapatnam	166.	Union Bank of India Financial Inclusion Lakkavaram Branch Main Road, Village Lakkavaram, Chodavaram-Mandalam Dist. Visakhapatnam (A.P.) Pin 531075

Name of the Regional Office	No.	Name and Address of Branch/Office
	167.	Union Bank of India Pendurthi Branch 80 feet Road, Ratnagiri Nagar, Chinna Mushiriwada, Pendurthi, Dist. Visakha-patnam. A.P. 530 051
	168.	Union Bank of India Chepala Uppada Branch At Chepala Uppada, Bheemunipatnam Mandal, Dist. Visakhapatnam, A.P. 531 163
	169.	Union Bank of India Eethakota Branch At Eethakota, Ravulapalem Mandal, Dist. East Godavari, A.P. 533 238
Regional Office Siligudi	170.	Union Bank of India Bhaluk Road Branch Masaldah Bazr, Post Kaariali Dist. Malda, Pin 732125 (West Bengal)
	171.	Union Bank of India Kalingpong Branch Thana Dara, Post Kalinpong Distt. Darjeeling, Pin 734401 (West Bengal)
	172.	Union Bank of India Bishnupur Branch At & Post Bishnupur, Via - Rampurhat Dist. Birbhum, Pin 731244 (West Bengal)
	173.	Union Bank of India Bolapur Branch Mission Compound, Post-Bolpur, Dist-Birbhum Pin 731 204 (West Bengal)
	174.	Union Bank of India Dabgram Branch 558, Surya Nagar 1 No. Dabgram, Siliguri 734 006 Dist. Darjeeling, West Bengal
	175.	Union Bank of India Darjeeling Branch 5, Dr. S.M. Das Road, Anand Palace Hotel, 1st Floor, Post & Dist. Darjeeling, Pin 734 101, West Bengal
	176.	Union Bank of India Desh Bandhu Para Branch Siliguri, Deshbandhu Road, PO-Siliguri Town, Dist. Darjeeling Pin 734004,West Bengal
	177.	Union Bank of India Dhupguri Branch B.R. Comlpex, First Floor, Falakata Road,Dhupguri, Dist.-Jalpaiguri, Pin 735 210 (West Bengal)
	178.	Union Bank of India Gangadhari Branch At & Post Gangadhari, Dist. Murshidabad, Pin 742 121,W.B.
	179.	Union Bank of India Gangtok Branch N.H. 31, M.G. Road, Gangtok-737101, Sikkim
	180.	Union Bank of India Geyazing Branch Pemayangtse Monastery Geyazing Bazar, Old Adda Building Geyazing, Pin 737 111 Distt. West Sikkim
	181.	Union Bank of India Jalpaiguri Branch 240/A, 1st Floor, Temple Street, Distt. Jalpaiguri, Pin 735 101, W.B.
	182.	Union Bank of India Jorethang Branch Jorethang Bazar. PO Naya Bazar, Dist. South Sikkim, Pin 737 121
	183.	Union Bank of India Kundal Branch At & Post Kundal Dist. Murshidabad, Pin 731 246 W.B.
	184.	Union Bank of India Kunuri Branch At & Post ;Kunuri Dist. Birbhum, Pin 731 252, W.B.
	185.	Union Bank of India Margram Branch At & Post Margram Dist. Birbhum, Pin 731 217 (West Bengal)

Name of the Regional Office	No.	Name and Address of Branch/Office
	186.	Union Bank of India Mangan Branch Mangan Bazar, Mangan Pin 737 116 Dist. East Sikkim
	187.	Union Bank of India Narayanpur ; Branch At & Post Narayanpur Via-Rampurhat, Dist. Birbhum, Pin-731 239, West Bengal
	188.	Union Bank of India Pulinda Branch At & Post Pulinda Dist. Murshidabad, Pin 742 121, W. B.
	189.	Union Bank of India Rampurhat Branch At & Post Rampurhat Dist Birbhum, Pin 731 224, W.B.
	190.	Union Bank of India Ranipool Branch N.H. 31 A, Ranipool, Pin 737 138, Dist.-East Sikkim
	191.	Union Bank of India Sainthia Branch Najrul Islam Sarani Post - Sainthia, Dist - Birbhum, Pin-731 234, (W.B.)
	192.	Union Bank of India Saldhamore Branch Post-M.D Bazar, Dist Birbhum, Pin 731 127 (W.B.)
	193.	Union Bank of India Siliguri (Main) Branch Krishna House, Hill-Cart Road, Siliguri, Pin 734 001 (W.B.)
	194.	Union Bank of India Singtam Branch Main Road, Post-Singtam Dist. East Sikkim, Pin 737 134
	195.	Union Bank of India Suri Branch New Dangalpara Near to new Bus Stand, Post-Suri Dist.-Birbhum, Pin 731 101 (W.B.)
	196.	Union Bank of India Sikkim Manipal Institute of Technology (SMIT) Branch Majithar, Dist. East Sikkim Pin 737 132
	197.	Union Bank of India Siliguri Mahakurma Parishad (SMP) Siliguri Branch Siliguri 734 001
	198.	Union Bank of India Siliguri Institute of Technology (SIT) Branch Salbari, Sukna Siliguri Distt Darjeeling , Pin 734225 (W.B.)
	199.	Union Bank of India Falakata Branch Subhas Pally, Falakata, Dist.-Jalpaiguri, Pin 735 211 (W.B.)
	200.	Union Bank of India Balurghat Branch Promoda Bhawan, Opposite Lila Lodge, Narayanpur, Balurghat, Dist. Dakshin Dinazpur Pin 733 101 (W.B.)
	201.	Union Bank of India Service Branch Sukh Sadan. 37, Bipin Paul Sarani, College Para, Siliguri, Pin 734 001 (W.B.)
	202.	Union Bank of India Regional Office Siliguri Sachin Saurav Apartment Ashutosh Mukherjee Road, College Para, Siliguri, Pin 734 001 (W.B.)
Regional Office, Goa	203.	Union Bank of India Carmona Branch At & Post Carmona, Salcete, District-Sourth Goa, Goa Pin 403 717
	204.	Union Bank of India Phondaghat Branch 342/2B, Ugwai Complex Bazarpeth, Dist. Sindhudurg, Maharashtra, Pin 406 601
	205.	Union Bank of India Dapoli Branch H & D House, Family Mall Road, Tal. Dapoli, Dist. Ratnagiri Pin 415 712

Name of the Regional Office	No.	Name and Address of Branch/Office
	206.	Union Bank of India Service Branch Model Residency, Shop No. 6, 7, 8 St. Inez Church Road, ST. INEZ Dist. North Goa, Pin-403001
	207.	Union Bank of India Kuwarbav Branch Shree Samartha Krupa Padvewadi, Mirjole, Gram Kuwarbav, Dist.Ratnagiri, Maharashtra, Pin 415 639
	208	Union Bank of India Guhagar Branch, Pahat, Near Guhagar Depot, Guhagar Chiplun Road, At Post & Tal. Guhagar, Maharashtra, Pin 415 703
Regional Office, Trivendrum	209.	Union Bank of India Kanthaloor Branch 8/210, Kovikadavu, Sahayagiri P.O., Idukki, Dist. 685 620
	210.	Union Bank of India Pala Branch Moons Building Opp. Mini Civil Station, Pala, Kottayam Dist. 686 575
	211.	Union Bank of India Ponkunnam (Vazhoor) Branch Vattakattu Building, KVMS Junction. NH-220, Ponkunnam, Kottayam 685 506
	212.	Union Bank of India Vaikom Branch Kaniamparambil Arcade, Valiya Kavala Bus Stand Vaikom-686141, Kottayam Dist.
	213.	Union Bank of India Aroor Branch Door No. VII/896-B.G. NH 47, Near PH Centre & Village Office, Aroor, Alappuzha
	214.	Union Bank of India Karhikappally Branch Kochuparambil Building Alappuzha 690 516
	215.	Union Bank of India Kaduthuruthy (Vaikom) Branch, Ist Floor, Kumar Complex, Central Complex, Kaduthuruthy, Vaikom taluk Pin 686604 Kottayam District
	216.	Union Bank of India Kumily Branch Dubai Complex NH 220, Kumily 685509
	217.	Union Bank of India Vandiperiyar Branch Jaya Building, K.K. Road, Vandiperiyear P.O., Idukki, Dist. 685533
	218.	Union Bank of India Kumarapuram Branch (Thiruvananthapuram), Devi Scans Building, Kumarapuram, Medical College P.O., Thiruvananthapuram 695 011

Delhi Region

Sl. No.	Name of the Branch, Code No.	Branch Address
219.	Mayur Vihar Phase III 2442	Indian Overseas Bank Plot No. 7 & 8 Agarwal Tower DDA Shopping Centre Kondli Gharoli Mayur Vihar Phase III Delhi 110 096
220.	Nangloi 2443	Indian Overseas Bank A-20 Adhyapak Nagar Nazafgarh Road Opp. Hanuman Mandir Nangloi, Delhi 110 041
221.	Mehrauli 2444	Indian Overseas Bank 893-A/8, Ground Floor Main Bazar Mehrauli Delhi 110030
222.	Dwarka Sector 20, 2445	Indian Overseas Bank G-4 Ground Floor Manish High Plaza Plot No. 25 Service Centre Sector 20 Dwarka, New Delhi 110 075
223.	Ashok Vihar 2259	Indian Overseas Bank A-6 Ashok Vihar Phase-II North District New Delhi 110 052

Sl. No.	Name of the Branch, Code No.	Branch Address
224.	Maurya Enclave 2260	Indian Overseas Bank 29, 30, 31-P Block Pacific Mall Pitampura (West) Maurya Enclave North West District New Delhi 110 034
225.	Najafgarh 2261	Indian Overseas Bank RZ-15 Ground Floor Oil Roshanpura Najafgarh West Distrct New Delhi-110 043
226.	Anand Vihar 2356	Indian Overseas Bank G-1 Plot No. 11 Chetan Complex Suraj Mal Vihar Local Shopping Anand Vihar New Delhi 110 092
227.	Mundka 2357	Indian Overseas Bank Khasra No. 428/4 Village:Mundka Delhi 110 041
228.	Mahipalpur 2358	Indian Overseas Bank A-7, Brahamputra House Delhi 110 037
229.	Sanchar Bhawan 2565	Indian Overseas Bank DOC & IT Sanchar Bhawan Ministry of Communication Ashok Road New Delhi 110 001
230.	East of Kailash 2668	Indian Overseas Bank C-36, Raja Hessan Marg East of Kailash New Delhi 110048
231.	Mayur Vihar Phase-II 2661	Indian Overseas Bank 23 Ist Floor Krishna Arcade LSC Mayur Vihar Phase-II New Delhi 110 092
232.	Ayodhya-2369	Indian Overseas Bank Old Bus Stand Hanumangari Ayodhya-224 133-U.P.
233.	Chitrakoot Dham (Karwi) 2472	Indian Overseas Bank 440/2, Dwarikapuri, Mandakini Road, Purani Bazar, Karwi- 210 205 U.P.
234.	Gosaigang 2516	Indian Overseas Bank Plot No. 28, Sadarpur Karora Gusainganj Dist- Lucknow, U.P. 227 125
235.	Itaunja 2517	Indian Overseas Bank Plot No. 215, Ward No. 7 Nagar Panchayat Itaunja District-Lucknow, U.P. 226 205
236.	Lalganj-2370	Indian Overseas Bank Kakajunj, Mahesh Nagar, Lalganj-229 206 District-Rae Bareli, U.P.
237.	Mahona 2512	Indian Overseas Bank House No. 533, Itaunja-Karsi Road, Mahona, District Lucknow, U.P. 227 205
238.	Mau Aima 2471	Indian Overseas Bank 172, Station Road, Mau Aima, District-Allahabad, U.P. 212 501
239.	Patti 2511	Indian Overseas Bank House No.1, Ward No. 2, Civil Line, Patti Town Distrcit-Pratapgarh, U.P. 230 135
240.	Sitapur 2181	Indian Overseas Bank Main Market Road, Sitapur-273 402, U.P.
241.	Sultanpur 2386	Indian Overseas Bank Civil Lines, In front of Bus Road, Sultanpur 228 001, U.P.
242.	Pratapgarh 2362	Indian Overseas Bank Chawla Arcade, Bhangwa Changi, Pratapgarh-230 001, U.P.
243.	Zaidpur (Barabanki) 2361	Indian Overseas Bank Rayan Complex, Sidhor Road, Zaidpur-225 414, Distt. Barabanki U.P.
244.	Chandauli 2572	Indian Overseas Bank Plot No. 453, Near Shankar Singh hospital, Chandauli 232 104, U.P.
245.	Mati 2571	Indian Overseas Bank Plot ;No. 56, Mati Bazar, Renduva Palhari, Chinhat Deva Road, Post-Muradhbad, Mati-225 301 District-Barabanki-U.P.

Sl. No.	Name of the Branch, Code No.	Branch Address
246.	Maharajganj 2557	Indian Overseas Bank 989, Shastri Nagar, Nagar Palika Parishad, Maharajganj 273 303 U.P.
247.	Maheva Patti 2556	Indian Overseas Bank 46-D, Indalpur Road, in front of Police Chowki, M.P. Chauraha, Naini, Allahabad-211 007 U.P.
Meerut Region		
248.	Baniawala 2503	Indian Overseas Bank Ashirvad Bhavan, Durga Chowk, Rishikesh Road, Baniawala, Post-Doyiwala, District-Dehradun-248 198
249.	Jalalpur 2467	Indian Overseas Bank Near Jahar Veer Mandir, Khair Road, Koeel Tehsil, Village Jalalpur, 202 001 Distrct-Aligarh
250.	Kashipur 2217	Indian Overseas Bank Chamunda Complex, Ramnagar Road, Kashipur-244 713, District-Udhyam Singh Nagar (Uttarkhand)
251.	Karna Prayag 2529	Indian Overseas Bank Hotel Parkdeep, P.O. Gandhinagar, Karna Prayag, District-Chamoli-246 444, Gadwal, Uttarkhand
252.	Ramnagar 2216	Indian Overseas Bank Ingwal Tower, Opposite M.P. College Field, Ramnagar-244 715 District-Nainital (Uttarakhand)
253.	Rudraprayag 2530	Indian Overseas Bank Near New Bus Stand, Rudraprayag, District-Rudraprayag, Uttarakhand-246 171
254.	Stadium Road, Bareli 2365	Indian Overseas Bank P-5/15, Stadium Road, D.D. Puram, Bareli-243 005
255.	Sudhowala 2305	Indian Overseas Bank 23 Gra, Sudhowala, P.O. Jhajhara Taluk, Vikas Nagar, Block Nagar, Block-Sahaspur, Dehradun-248 007
256.	Srinagar-Gadwal 2528	Indian Overseas Bank, Sanjay Talkies Building, Sri Nagar - Gadwal, Badrinath Main Road, P.O. Paudi Gadwal, Uttarakhand 246174
257.	Vikas Nagar 2502	Indian Overseas Bank, Bhaktawar Singh Marg, Main Bazar, Vikas Nagar, District - Dehradun, PIN - 248 198
Patna Region		
258.	Purnea Branch	Indian Overseas Bank, Madhubani Bazar, Saharsa Road, Purnia Distt.-Purnia PIN - 854301
259.	Boring Road Branch	Indian Overseas Bank, New Patliputra Colony, Near CISF Office, Boring Road Patna, Distt.-Patna PIN - 800013
260.	Siwan Branch	Indian Overseas Bank, Ward No. 16, Station Road, Babunia More Siwan, Distt.-Siwan PIN - 841226
261.	Gopalganj Branch	Indian Overseas Bank, Chuna Gali (Near Canara Bank), Jadawpur Road, Gopalganj, Distt.-Gopalganj PIN - 841428
262.	Biharsharif Branch	Indian Overseas Bank, Ram Raj Complex, Ramchandrapuri, Bihar Shariff, Distt. Nalanda PIN - 803101
263.	Madhubani Branch	Indian Overseas Bank, Opp. Watson Inter College, Hospital Road, Madhubani, Distt. Madhubani PIN - 847211

Sl. No.	Name of the Branch, Code No.	Branch Address
264.	Chapra Branch	Indian Overseas Bank, Near Hanuman Mandir, Mouna Gola Road, Chapra, Distt. Saran PIN-841301
265.	Begusarai Branch	Indian Overseas Bank, Shyam Commercial Complex, Kachahari Road, Begusarai, Distt. Begusarai PIN-851 101
266.	Kahalgaon Branch	Indian Overseas Bank, Nav Chetna Kendra, Thana Road, Kahalgaon Road, Distt. Bhagalpur PIN-813 203
267.	Buxar Branch	Indian Overseas Bank, Nav Durga Complex, Collectorate Road, Ambedkar Chowk, Buxar, Distt. Buxar PIN-802103
268.	Arrah Branch	Indian Overseas Bank, Maharana Pratap Nagar, New Police Line Road, Arrah, Distt. Bhojpur PIN-802 301
269.	Hinoo, Ranchi Branch	Indian Overseas Bank, Opp. Eyelex Complex, Main Road, Hinoo, Ranchi, Distt. Ranchi PIN-834 002
270.	Sahibganj Branch	Indian Overseas Bank, Near Town Thana Chowk Bazar, Shashi Bhushan Rai Road, Sahebganj, Distt.-Sahebganj PIN - 816 109
271.	Saraidhela Branch	Indian Overseas Bank, Ward No. 28, Main Road, Saraidhela, Dhanbad, Distt. Dhanbad
272.	Chaibasa Branch	Indian Overseas Bank, L.D. House, Amla Tola, Sadar Bazar, Station Road, Chaibasa, Distt. Paschim Singhbhum PIN-833 201
273.	Sakchi Branch	Indian Overseas Bank, 66, Pennar Road, Sakchi, Jamshedpur, Distt.-East Singhbhum PIN-831001
274.	Koderma Branch	Indian Overseas Bank, Plot No. 3409, Ward No. 6, Near Punjab Hotel, Patna Ranchi Road, Koderma, Distt.-Koderma PIN-825410
275.	Simri Branch	Indian Overseas Bank, First Floor, Simri-Govindpur, Near Simri Thana, Post Office-Kansi Simri, Distt.-Darbhanga PIN-847106, Bihar
276.	Shiksha Bhawan Branch	Indian Overseas Bank, Bihar Rajbhasha Parishad Campus, Acharya Shivpujan Sahay Path, Saidpur, Patna Distt-Patna, PIN-800004
277.	Lohardaga Branch	Indian Overseas Bank, First Floor, M.M. Market, Rana Chowk, Lohardaga, Distt.-Lohardaga, PIN-835302
278.	Hazipur Branch	Indian Overseas Bank, First Floor, S.S. Complex, Johri Bazar, Hazipur, Vaishali Bihar, PIN-844101
279.	Bhagwanpur Branch	Indian Overseas Bank, First Floor, Gopal Market, Bhagwanpur Chatti, Rewa Road, Muzaffarpur, PIN-842001
280.	Godda Branch	Indian Overseas Bank, First Floor, Ward No. 6, Pirpainti Road, Hatia Chowk, Godda, PIN-814 133, Jharkhand
BHOPAL REGION		
281.	Vidisha 2167	Indian Overseas Bank, Plot No. 60, Ward No. 7, NH-86, Near Bus Stand, Vidisha, District - Vidisha, PIN-464 001

Sl. No.	Name of the Branch, Code No.	Branch Address
282.	CPRI Bhopal 2171	**Indian Overseas Bank,** Central Power Research Institute, Govindapura, P.O. Bhopal, District - Bhopal, PIN-460 023
283.	Govindapura 2233	**Indian Overseas Bank,** 6 Punjabi Bagh, Govindapura, Bhopal, District - Bhopal, PIN-462 023
284.	Mandideep 2327	**Indian Overseas Bank,** 2A, Indira Nagar, Opp. Heg Mandideep, District - Raisen, Bhopal (MP), PIN-462 046
285.	Lalghati - Bhopal 2413	**Indian Overseas Bank,** 39, Janki Nagar, Gufa Mandir Road, Lalghati, Bhopal-462 002
286.	Sehore 2419	**Indian Overseas Bank,** House No. 40, Jayanti Colony, Sekadakhedi Road, Sehore - 466 001
287.	Gulmohar Colony 2415	**Indian Overseas Bank,** Subhadra House, 11 Jai Builders Colony, Saket, Gulmohar Colony, Indore - 452 018
288.	Murwara-Katni 2418	**Indian Overseas Bank,** Bardsley English School Campur, Murwar Mission Chawk, Katni, Ward No. 5, Chadrashekhar Azad Ward, House No. 436 to 436/9, Katni, M.P. 483 501
289.	Hoshangabad 2416	**Indian Overseas Bank,** Plot No. 1, Anand Nagar, Hoshangabad, M.P. 461 001
290.	Shivpuri 2420	**Indian Overseas Bank,** House No. 1326, Quarter No. 3, Ram Arked, Jhansi Triraha, A.B. Road, Shivpuri, M.P. PIN - 473 551
291.	Morena 2417	**Indian Overseas Bank,** 160/3, Ward No. 34, Opp. S.P. Bunglow, M.S. Morena, M.P. 476 001
292.	Devas	**Indian Overseas Bank,** 01, Malwa Shanai Complex, Opp. Apex Hospital, Tilar Nagar, A.B. Road, Devas, M.P. - 496 001
293.	Raigarh 2466	**Indian Overseas Bank,** First Floor, Modi Plaza, Jagatpur Road, Raigarh, Chhattisgarh - 496 001
294.	Tilda 2323	**Indian Overseas Bank,** R.K.S. Plaza, Kharora Road, Tilda, PO-Neora, District-Raipur, Chhattisgarh, PIN-493 114
295.	Mana 2324	**Indian Overseas Bank,** Gauri Joddar, Mana Camp Main Road, Front of Novodaya Quarters, District - Raipur, Chhattisgarh, PIN-491 107
296.	Utai 2325	**Indian Overseas Bank,** Asha Complex (Patan Pul), Main Road, Utai, District Durg, Chhattisgarh, PIN - 491 107
297.	Dhanora 2326	**Indian Overseas Bank,** Damodar Prasad Sahu, Village Dhanora, PO - Hanoda, District-Durg, Chhattisgarh, PIN - 491 001
	JAIPUR REGION	
298.	Bapui 2696	**Indian Overseas Bank,** Gadh Bapui, Boli Tehsil, Sawai Madhopur - 322023 (Rajasthan)
299.	Tonk 2682	**Indian Overseas Bank,** Dwarikesh Nazarbagh Palace Road, Tonk-304001 (Rajasthan)
300.	Chandpole 2426	**Indian Overseas Bank,** 1193, Uniyaro Ka Rasta, Chandpole Bazar, Jaipur-313324 (Rajasthan)
301.	Vidhyadhar Nagar 2427	**Indian Overseas Bank,** Shop No. 20—24, Gr. Floor, Alankar Plaza, Central Spine, Vidhyadhar Nagar-303303 (Rajasthan)
302.	Jaisalmer 2428	**Indian Overseas Bank,** B-453, Opp. Mandir Palace,

Sl. No.	Name of the Branch, Code No.	Branch Address
		Near Tajia Tower, Jaisalmer-321001 (Rajasthan)
303.	Rajsamand 2429	**Indian Overseas Bank,** Pagaria Estate, Pagaria Market, Mukherjee Circle, Rajasmand - 306401 (Rajasthan)
304.	Barmer 2430	**Indian Overseas Bank,** Goswami Tower, Roy Colony Road, Opp. Civil Hosp. Building, Barmer-322001 (Rajasthan)
305.	Chittorgarh 2431	**Indian Overseas Bank,** Innai Residency, Bhilwara Road, Chitorgah-332001 (Rajasthan)
306.	Dausa 2432	**Indian Overseas Bank,** Plot No. 1-2-3, National Highway-11, Jaipur Agra Road, Dausa-312001 (Rajasthan)
307.	Bundi 2433	**Indian Overseas Bank,** Devshree Complex, Bye Pass Road, Bundi-302023 (Rajasthan)
308.	Bharatpur 2434	**Indian Overseas Bank,** Singhal Nursing Home, Infront of Kali ki Bagichi, Main Circular Road, Bharatpur-344001 (Rajasthan)
309.	Sawai Madhopur 2435	**Indian Overseas Bank,** Shukla Bhawan, Goverdhan Colony, New Grain Mandi Road, Sawai Madhopur-323001 (Rajasthan)
310.	Sikar 2436	**Indian Overseas Bank,** Near Biscope Pvt. Ltd., Shastri Nagar, Rani Sati Road, Sikar-302001 (Rajasthan)
311.	Hanumangarh 2437	**Indian Overseas Bank,** Baba Shyam Singh Complex, Hanumangarh-345001
312.	Pali 2438	**Indian Overseas Bank,** Jai Narayan Vyas Colony, Pali -35512 (Rajasthan)
313.	Mahwa 2540	**Indian Overseas Bank,** Opp. Police Station Jaipur-Agra Road, Mahwa, Dausa-321608 (Rajasthan)
314.	Newai 2539	**Indian Overseas Bank,** Near Nagar Palika, Jaipur Kota Road, Jamat Newai, Tonk-304021 (Rajasthan)
315.	Lalsot 2541	**Indian Overseas Bank,** New Anaj mandi Sawai Madhopur Road, Lalsot Dausa-303503
316.	Pushkar 2542	**Indian Overseas Bank,** Near Roadways Bus Stand, Opp. Gurudwara Pushkar, Ajmer-305022 (Rajasthan)
317.	Abu Road 2330	**Indian Overseas Bank,** Ward No. 3 Manpur, Mount Road, Abu Road, Sirohi-307206 (Rajasthan)
318.	Neemrana 2307	**Indian Overseas Bank,** Shop No. 32, Industrial Area, Neemrana, Alwar (Rajasthan)
319.	Bandikui 2607	**Indian Overseas Bank,** Ist Floor Pujari Ka Katla 16, Raja Bazar Behind Girl's College, Bandikui 303313 (Rajasthan)
320.	Rajgarh 2608	**Indian Overseas Bank,** Khasra 551/0.5 Between Axis Bank & SBBJ, Rajgarh 301408 (Rajasthan)
321.	Banswara 2698	**Indian Overseas Bank,** Opp. Tehsil Office, Banswara Jaipur (Rajasthan)
322.	Mehra Jatuwas 2595	**Indian Overseas Bank,** Near Bus Stand Patwargarh, Kharsa No. 108, Mehra Jatuwas, Jhunjhunu-333036 (Rajasthan)
323.	Nagaur 2893	**Indian Overseas Bank,** Gandhi Chowk, Railway Station, Nagpur-341001 (Rajasthan)
324.	Ajmer Road 2790	**Indian Overseas Bank,** 125, Gyan Vihar, New Roma Nursing Home, D.C.M. Ajmer Road (Rajasthan)

Sl. No.	Name of the Branch, Code No.	Branch Address
325.	Rohta 2597	**Indian Overseas Bank,** 5 Vaishno Vihar Agra Highway, Rohta Agra-282001 (U.P.)
326.	Kirawali 2538	**Indian Overseas Bank,** Agra Fatehpur Sikri Road, Galla Mandi, Kirawali (Agra)-283122 (U.P.)
327.	Etmadpur 2674	**Indian Overseas Bank,** Bheem Market Brahan Road, Etmadpur Agra-283202 (U.P.)
328.	Achhnera 2329	**Indian Overseas Bank,** 2414, Agarwal Building, Village Achhnera, Agra, (U.P.)
329.	Fatehabad 2895	**Indian Overseas Bank,** Near Police Station, Sadar Bazar, Fatehabad-283111 (U.P.)
330.	Sikandara Road 2894	**Indian Overseas Bank,** Nihal Complex, Sector 5, Uttar Pradesh Awas Vikas Colony, Sikandra Agra-282007 (U.P.)
331.	Dayal Bagh 2911	**Indian Overseas Bank,** 8/13 I Kaushal Pur, By Pass Road, Dayal Bagh Agra-282005 (U.P.)
332.	Bichpuri 2916	**Indian Overseas Bank,** Agra Bichpuri Main Road, Opp. State Bank of India, Bichpuri, District Agra-283105 (U.P.)
333.	Sanjay Place 2912	**Indian Overseas Bank,** Shop No. 1 & 10 Ground Floor, 54 Prateek Tower Opp. to HDFC Bank, Sanjay Place, Agra-282002 (U.P.)
334.	Keetham 2331	**Indian Overseas Bank,** Keetham Zila, Agra (U.P.)
335.	Farah 2611	**Indian Overseas Bank,** Kailash Nagar, Bypass Farah, Mathura-281122 (U.P.)
336.	Gokul 2613	**Indian Overseas Bank,** Nand Dwar, Gokul, Distt.-Mathura-281303 (U.P.)
337.	Raya 2614	**Indian Overseas Bank,** Plot No. 195, Infront of Railway Station, Raya, Dist.-Mathura-281204 (U.P.)
338.	Goverdhan 2697	**Indian Overseas Bank,** Kunj Bihari Sewa Sadan, Radha Kund Road, Opposite Bus Stand, Goverdhan, Distt.-Mathura PIN-281502 (U.P.)
339.		**Central Bank of India,** Banka Kateria Road, Banka P.O. Banka Distt. Banka (Bihar)
340.		**Central Bank of India**, Shekhpura, Chandni Chowk, Cinema Road, P.O. Shekhpura Distt.: Shekhpura (Bihar)
341.		**Central Bank of India,** Jamhore, A.N. Road Jamhore, P.O. Jamhore, Distt.: Aurangabad (Bihar)
342.		**Central Bank of India,** Chandni Chowk, Stuart Ganj, Mohania, P.O. Mohania, Distt. Caimur (Bihar)
343.		**Central Bank of India,** Ankorha P.O. Ankorha, Distt. Aurangabad (Bihar)
344.		**Central Bank of India,** Jehanabad, Ambedkar Chowk Court Area, P.O. Jehanabad Distt.: Jehanabad (Bihar)
345.		**Central Bank of India,** V.K.S.U. University, Katira Road, Ara P.O.: Ara Distt. Bhojpur (Bihar)

Sl. No.	Name of the Branch, Code No.	Branch Address
346.	Central Bank of India,	S.N. Sinha College, S.N. Sinha College Campus, P.O. Aurangabad, Distt.: Aurangabad (Bihar)
347.	Central Bank of India,	A.M. College, A.M. College Campus, Katari Hill Road, P.O.: R.S. Gaya, Distt. Gaya (Bihar)
348.	Central Bank of India,	S.B. College, S.B. College building, P.O.-Pakari, Distt.-Bhojpur
349.	Central Bank of India,	K.L.S. College, Gandhi Nagar, Nawada, Near No. 3, Bus Stand, P.O. Nawada, Distt. Nawada (Bihar)
350.	Central Bank of India,	Kisan College, Kisan College Campus P.O. Sohsarai, Distt. Nalanda (Bihar)
351.	Central Bank of India,	Phulbari Sharif, Khagaul Road, Kali Mandir, Post Phulbari Sharif, Patna (Bihar)
352.	Central Bank of India,	Ganga Devi Mahila College, Ganga Devi Mahila College Premises, Kankarbag, Lohiya Nagar, Patna (Bihar)
353.	Central Bank of India,	Patna University, Patna College Premises, Ashok Rajpath, Patna (Bihar)
354.	Central Bank of India,	T.P.S. College, T.P.S. College Premises, Chiraya Tand, Patna (Bihar)
355.	Central Bank of India,	Mahendru, Choudhary Market, Near Mahendru Post Office, Ashok Rajpath, Patna (Bihar)
356.	Central Bank of India,	Nortdame Academy, N.D.A. Premises, Industrial Estate, Main Road, Post P.P. Colony, Patna (Bihar)
357.	Central Bank of India,	Choudhary Tola, Jagannath Singh Lane, Post Choudhary Tola, Patna (Bihar)
358.	Central Bank of India,	C.D.A. C.D.A. Premises, Rajendra Path, Patna (Bihar)
359.	Central Bank of India,	Hindi Vidyapeeth, B.N. Jha Road, Distt. Deoghar (Jharkhand)
360.	Central Bank of India,	Sagma, P.O. Kataharkala, Distt. Garhwa (Jharkhand)
361.	Central Bank of India,	Kurpania, Anand Bazar, Kurpania, P.O. Sunday Bazar, Block: Bermao, Distt. Bokaro (Jharkhand)
362.	Central Bank of India,	MGM Bokara, MGM School, Bokaro, Sector IV, Distt. Bokaro (Jharkhand)
363.	Central Bank of India,	N. Road Jamshedpur, Tisco N. Gate, Distt. East Singhbhum (Jharkhand)
364.	Central Bank of India,	Govindpur, Tirupati Complex, G.T. Road, Govindpur, P.O. Govindpur, Disstt. Dhanbad (Jharkhand)

Sl. No.	Name of the Branch, Code No.	Branch Address
365.	Central Bank of India,	Navhatta, Vill. & P.O. Navhatta, Distt. Saharsa (Bihar)
366.	Central Bank of India,	Purab Bazar, Distt. Saharsa (Bihar)
367.	Central Bank of India,	Saharsa College, Distt. Saharsa (Bihar)
368.	Central Bank of India,	Amha, Vill. & P.O. - Amha, Distt. Sapaul (Bihar)
369.	Central Bank of India,	P.O. Bahorva, Parsa Via Pipra Bazar, Distt. Sapaul (Bihar)
370.	Central Bank of India,	Sukhasan P.O. Shripur, Via Kharvitta, Distt. Sapaul (Bihar)
371.	Central Bank of India,	P.O. Velhi, Via-Nirmali, Distt. Sapaul (Bihar)
372.	Central Bank of India,	Puraani Bazar, P.O. Ganeshpur, Disstt. Madhepura (Bihar)
373.	Central Bank of India,	Hardi, P.O. Hardi, Via Gamharia Distt. Sapaul (Bihar)
374.	Central Bank of India,	Panchayat Bhawan, Alam Nagar, Distt. Madhepura (Bihar)
375.	Central Bank of India,	Asha Palace, Kali Sthan, Disstt. Begusarai (Bihar)
376.	Central Bank of India,	P.O. Gaura, Via Barauni Dyori, Distt. Begusarai (Bihar)
377.	Central Bank of India,	Latona, P.O. Triveni Ganj, Distt. Sapaul (Bihar)
378.	Central Bank of India,	Belari, P.O. Belari, Via Budhma, Distt. Madhepura (Bihar)
379.	Central Bank of India,	Israinkala, P.O. Jadua Patti, Distt. Madhepura (Bihar)
380.	Central Bank of India,	Baurani, Rajendra Road, Distt. Begusarai (Bihar)
381.	Central Bank of India,	Amjadpur, P.O. Pidholi, Distt. Begusarai (Bihar)
382.	Central Bank of India,	Mahesh Khoont, Keshri Market, Distt. Khagaria (Bihar)
383.	Central Bank of India,	Alirajpur Branch, 20 Nagar Palika Marg, Alirajpur-457887 Distt. Alirajpur Madhya Pradesh
384.	Central Bank of India,	Jhabua Branch Behind City Post Office Hansa Lodge Jhabua-457661 Distt: Jhabua
385.	Central Bank of India,	Jamo Bajar Branch, At+PO: Jamo Bajar, Block: Goriakothi Sub-division: Maharajganj Distt: Siwan, Postal Index No. 841413 (Bihar)
386.	Central Bank of India,	Panchdeorhi Branch At+P.O.: Panchdeorhi, Distt: Gopalganj Postal Index No. 841437 (Bihar)

Sl. No.	Name of the Branch, Branch Code No.	Branch Address
387.	Central Bank of India,	D.A.V. College Siwan Branch, D.A.V. College Campus Siwan, Distt.: Siwan, Postal Index No. 841226 (Bihar)
388.	Central Bank of India,	Hasanpura Branch At+PO: Hasanpura, Near Hasanpura Bridge, Distt: Siwan Postal Index No. 841236 (Bihar)
389.	Central Bank of India,	Pachlakhi Branch At+PO: Pachlakhi P.S. Nautan Distt.: Siwan Postal Index No. 841436 (Bihar)
390.	Central Bank of India,	Parsa Branch, At: Parsa, PO: Parsa-Bajar, Block+P.S. Ekma Dist: Saran (Chhapra) Postal Index No. 841 220 (Bihar)
391.	Central Bank of India,	Jamapur Branch, At: Jamapur, PO: Jiradei, Block: Jiradei Sub-division: Siwan Dist: Siwan, Postal Index No. 841 245 (Bihar)
392.	Central Bank of India,	Malamirja Tukada Branch J.P. University Campus PO: Chhapra, Dist: Saran (Chhapra) Postal Index No. 841301 (Bihar)
393.	Central Bank of India,	Jagadamba College Branch, Jagadamba College Campus PO: Chhapra, Dist: Saran (Chhapra), Postal Index No. 841 301 (Bihar)
394.	Central Bank of India,	Vidya Vikas Mandal College Branch, College Complex, Pedda, Margon, Goa 403601
395	Central Bank of India,	St. Javier College Alteno, Mapuca, Dist: North Goa, Goa 403 507
396.	Central Bank of India	Calangute Branch Algarvi Retreat Porbavaddo, Calngute, Barddez, Dist: North Goa, Goa 403 516
397.	Central Bank of India	Naveli Branch Colmorod Aishs Building, Carwar, Madgaon Road, Navelim, Salset, Dist: South Goa, Goa 403 707
398.	Central Bank of India	NRI Branch Damodar Bldg, Station Road, Near Gomantak Niketan Bldg., Margao 403 601, Salcete, Dist: South Goa,
399.	Central Bank of India	APMC Branch Krishi Utpad Bajar Samiti Campus, Bettiah-845438 Dist: West Champaran Tel: 06254243608 E-Mail: bmmoti4099@centralbank.co.in
400.	Central Bank of India	Barwal Branch At+Post: Bagaha II Dist: 06251227750 E-Mail:bmmoti28605@centralbank.co.in
401.	Central Bank of India	Chanpatia Branch At+Post: Chanpatia Dist: West Champaran-845438 Tel: 06254266139 E-Mail: bmmoti3605@centralbank.co.in
402.	Central Bank of India	Dalpat Vishunpur Branch At+Post: Dalpat Vishunpur Via Panchpakadi Dist: East Champaran-845427 Tel: 06250282233 E-Mail: bmmoti3043@centralbank.co.in

Sl. No.	Name of the Branch, Branch Address Code No.
403.	Central Bank of India Devapur Branch At+Post: Panchpakadi Dist: East Champaran-845427 Tel: 06250250133 E-Mail: bmmoti3005@centralbank.co.in
404.	Central Bank of India Duncan Hospital Branch Duncan Hospital Campus Raxaul Dist: East Champaran-845305 Tel: 06255220963 E-Mail: bmmoti0031@centralbank.co.in
405.	Central Bank of India Gora Branch At: Shanichari Chauk, Via Lauria Dist: West Champaran-845543 Tel: 06254254243 E-Mail: bmmoti2858@centralbank.co.in
406.	Central Bank of India Kandhwalia Branch At: Kandhwalia Post: Bagahi, Dist: West Champaran-845106 Tel: 06256264463 E-Mail: bmmoti3017@centralbank.co.in
407.	Central Bank of India Kehunia Branch At: Hardia Chauk Narkatiaganj Dist: West Champaran-845455 Tel: 06253242028 E-Mail: bmmoti2743@centralbank.co.in
408.	Central Bank of India Kesarria Branch Block Road, Post: Kesaria Dist: East Champaran-845301 Tel: 06257269875 E-Mail: bmmoti3606@centralbank.co.in
409.	Central Bank of India Patani Branch At+Post: Ramgadhwa Dist: East Champaran-845433 Tel: 06255233714 E-Mail: bmmoti2794@centralbank.co.in
410.	Central Bank of India Phenhara Branch At+Post: Phenhara Dist: East Champaran-845420 Tel: 06259277153 E-Mail: bmmoti3387@centralbank.co.in
411.	Central Bank of India Sirinagar Branch At: Sirinagar Post: Dumari Bazar Dist: West Champaran-845452 Tel: 06254224322 E-Mail: bmmoti3058@centralbank.co.in
412.	Central Bank of India Taulaha Branch At+Post: Ramnagar Dist: West Champaran-845105 Tel: 062596224073 E-Mail: bmmoti2886@centralbank.co.in
413.	Central Bank of India Lead District Office, East Champaran Balua Tal, Motihari Dist: East Champaran-845401 Tel: 06252232793 E-Mail: idmechamp@centralbank.co.in
414.	Central Bank of India Lead District Office, West Champaran Lal Bazar, Bettiah Dist: West Champaran - 845438 Dist: 06254242311, Fax: 06254232261 E-Mail:
415.	Central Bank of India Regional Office, Balua Tal, Motihari Dist: East Champaran-845401 Tel: 06252232448 E-Mail: rmmotiro@centralbank.co.in
416.	Central Bank of India Gorwa Branch At+Post: Gorwa Dist: East Champaran
417.	Central Bank of India Fetehpur Branch Machharaganva Dist: West Champaran
418.	Central Bank of India Abbigere Branch Sri Skanda Complex, "F" Cross, Abbigere Main Road, Bangalore-560 090
419.	Central Bank of India Bannerghatta Branch, 383/1A, Hulimavu, Bannerghatta Road, Bangalore 560 076

Sl. No.	Name of the Branch, Branch Address Code No.
420.	Central Bank of India HSR Layout Branch No. 395, 10th Main, 7th Sector, Behind Muniyappa Complex, HSR Layout, Bangalore 560 102
421.	Central Bank of India Jaraganahalli Branch, No. 1, 1st Croass, Rajiv Gandhi Road, Jaraganahalli (J.P. Nagar) Bangalore 560 078
422.	Central Bank of India Jayanagar IX Block Branch R J Arcade, No. 1029/41, 27th A Main, 100 ft Ring Road, 9th Blcok, Jayanagar Bangalore 560 041
423.	Central Bank of India Kemoapura Hebbal Branch 26&29, R.S. Complex, Anjaneya Temple Street, Kempapura, Bangalore 560 024
424.	Central Bank of India Kodigehalli Branch No. 20, Kempegowda Nagar Road, Virupakshapura, Near Telecom Circle, Vidhyaranyapura Post, Kodigehalli, Bangalore 560 097
425.	Central Bank of India Mathikere branch, 907/6, Sir Complex, MES Ring Road, Muthyal Nagar, Bangalore 560 054
426.	Central Bank of India Ramamurthy Nagar Branch, 72/73, Maruthi Complex, Hoysala Nagar, 4th Main, T.C. Palya Main Road, Ramamurthy Nagar Extn., Bangalore 560 016
427.	Central Bank of India R.T. Nagar Branch, No. 9 D.R. Plaza, Dinnur Main Road, Bangalore 560 034
428.	Central Bank of India Vijayanagar Branch, Sir Krishna, No. 29, 1st Floor, Magadi Main Road, M.C. Layout, Vijayanagar, Bangalore 560 040
429.	Central Bank of India Yelahanka Branch, 98 & 99, LIG Venkateshwara Complex, 707, 4th Phase, Near Govt. School, Yelahanka New Town, Bangalore 560 064
430.	Central Bank of India Church of South India Branch Church of South India Council for Child Care, Centre, Bangalore, 26, Lavelle Road, Bangalore 560 001
431.	Central Bank of India Central Silk Board Branch C.S.B. Complex, BTM Layout, Madiwala, Bangalore 560 068
432.	Central Bank of India Sophia High School Branch Bangalore, 47, Palace Road, Bangalore 560001
433.	Central Bank of India Widia (India) Ltd., Branch, Bangalore, 8/9 Mile, Tumkur Road, Bangalore 560 073
434.	Central Bank of India Indian Institute of Harticultural Research (IIHR) Branch, Lake Post, Hesaraghatta 560 089 Bangalore Rural Dist.
435.	Central Bank of India Mandhya Branch No. 5, 28/1121/3, 3rd Main Road, Ashoknagar, Mandya, Mandya Dist. 571401
436.	Central Bank of India Hassan branch, 77/15A, Near Stadium, Vidyanagar, M.G. Road, Diast. Hassan 573 201
437.	Central Bank of India Tumkur Branch Vijaya Complex Someshwarapuram Main Road, Tumkur 572 102
438.	Central Bank of India Dattagalli Branch 22/23, Kanakadasa Nagar, Netaji Circle & Double Road, Dattagalli, Mysore 570 023
439.	Central Bank of India Hosakote Branch No. 21, Near Nagadeshwara Temple, Bus Stand Road, Hossakote 562114 Karnataka

Sl. No.	Name of the Branch, Branch Address Code No.
440.	Central Bank of India Kanakpura Branch Ramanagara District, 602/655, M.G. Road, Opp. Range Forest Office, Kanakapura 562 117
441.	Central Bank of India Madikeri Branch No. 115/81 A, Block No. 2, Ground Floor, Gowlibeedi, Kohinoor Road, Madikeri 571 201.

Syndicate Bank, Official Language Division, HO: Manipal-576 104

Sl. No.	Name of the Branch, Branch Address Code No.
442.	Syndicate Bank Hunsur Branch # 3739/1 B.M. By Pass Road Hunsur Dist: Mysore State: Mysore Pin : 571 105
443.	Syndicate Bank Siddartha Nagar Branch # 147/13 Siddartha Complex Siddartha Nagar Dist: Mysore State: Mysore Pin : 570 011
444.	Syndicate Bank Adarsh Nagar Branch D-27-28, Rajan Babu Road Adarshnagar State: Delhi Pin : 110 033
445.	Syndicate Bank Model Town Branch Sanker Towers K-1/1 Model Town-111 Near Post Office State: Delhi Pin : 110 009
446.	Syndicate Bank Himmatnagar Branch Ratan Sagar Sahkari Jinchar Rasta Chhaparia Road Himmathnagar Dist: Sabarkantha State: Gujarat Pin : 383 001
447.	Syndicate Bank Vamaiya Branch C/o Gram Panchayat Committee Hall Vamaiya Taluk Dist: Patan State: Gujarat
448.	Syndicate Bank Palanpur Branch 1,2,3, H.K. Towers Hanuman Tekari Abu Highway, Palanpur Dist: Banaskantha State: Gujarat Pin : 385 001
449.	Syndicate Bank Pratapgarh Branch Sri Govindnathji Haweli Gopalganj Pratapgarh Dist: Pratapgarh State: Rajasthan Pin : 312 605
450.	Syndicate Bank Rajasamand Branch Main Market Bhilwara Road J.K. Curve Hathina M K Kankroli Dist: Rajsamand State: Rajasthan Pin : 313 324
451.	Syndicate Bank Bundi Branch Ward No. 25 Lanka Gate Road Bundi Dist: Bundi State: Gujarat Pin : 323 001
452.	Syndicate Bank Sri Karanpur Branch 5-C Block Ward No. 15 Opp. OBC Sri Karanpur Dist: Sriganganagar State: Rajasthan Pin : 335 073

Sl. No.	Name of the Branch, Branch Address Code No.
453.	Syndicate Bank Bagha Branch Village & P.O. Bagha Dist: Sitamarhi State: Bihar Pin : 843 332
454.	Syndicate Bank Banka Branch Harendra Market Katoriya Road Dist: Banka State: Bihar Pin : 813 102
455.	Syndicate Bank Balihar Branch Village Balihar PO & PS Surajpura Balihar Dist: Rohtas State: Bihar Pin : 802 226
456.	Syndicate Bank Balha Branch Village & P.O. Balha Via Pusa Ps. Chakmahesi Dist: Samastipur State: Bihar Pin : 848 209
457.	Syndicate Bank Begusarai Branch Satyaveer Shanti Plaza Hiralal Chowk Near RSS Begusarai Dist: Begusarai State: Bihar Pin : 851 101
458.	Syndicate Bank Chittaloriya Branch Village Chittaloriya P.O. Deosung Chittaloriya Dist: Deoghar State: Jharkhand Pin : 814 112
459.	Syndicate Bank Dhobgama Branch Village & P.O. Dhobgama PS Pusa Dist: Samastipur State: Bihar Pin : 848 125
460.	Syndicate Bank Daulathpur Chandi Branch Village Daulathpur Chandi Dist: Vaishali State: Bihar Pin : 844 146
461.	Syndicate Bank Dumari Branch Village Balihar P.O. Khabra Dist: Muzaffarpur State: Bihar Pin : 843 146
462.	Syndicate Bank Godda Branch Main Chowk Godda Dist: Godda State: Jharkhand Pin : 814 133
463.	Syndicate Bank Hansdiha Branch Hansdiha Chowk Dist: Dumka State: Jharkhand Pin : 814 145
464.	Syndicate Bank Harchanda Branch Village Harchanda P.O. Panpur Kariya Dist: Muzaffarpur State: Bihar Pin : 843 146
465.	Syndicate Bank Kanchanpur Branch Village : Kanchanpur Jalma Chowk P.O. Lupung Block : Katkamasandi Dist: Hazaribagh State: Jharkhand Pin : 825 319
466.	Syndicate Bank Marpa Branch Village Marpa P.O. Phulwaria Dist: Sitamarhi State: Bihar Pin : 843 317

Sl. No.	Name of the Branch, Branch Address Code No.
467.	Syndicate Bank Mothihari Branch Kutchery Road Balua Chowk Motihari Dist: Motihari State: Bihar Pin : 845 401
468.	Syndicate Bank Ramapur Maheshpur Branch Village & P.O. Ramapur Maheshpur Dist: Samastipur State: Bihar Pin : 848 130
469.	Syndicate Bank Samastipur Branch Opp. BRB College Mohanpur Road Samastipur Dist: Samastipur State: Bihar Pin : 848 101
470.	Syndicate Bank Sheikhpura Branch Main Market Chandni Chowk Crossing Dist: Sheikhpura State: Bihar Pin : 811 105
471.	Syndicate Bank Taraura Branch Village : Taraura P.O. Peerbadhouna Via : Nagarnausa Taraura Dist: Patna State: Bihar Pin : 801 305
472.	The Branch Manager ADB Manda No. D-2/1849/366, I Main Bandigowda Layout Mandya Mandya-Karnataka-571401
473.	The Branch Manager Aghalaya Via Santhebachahallyaghalaya, K R Pet Taluk Mandya Karnataka-571436
474.	The Branch Manager Belagula KRS Main Road, Belagula Srirangapatna Taluk Mandya-Karnataka-571606
475.	The Branch Manager Belakavadi PB No. 1, Main Road Belakavadi, Malavali Taluk Mandya Karnataka-571417
476.	The Branch Manager Bellale Bellale, Pandavapura Taluk Mandya, Karnataka-571434
477.	The Branch Manager Bindiganavile No. 71, Bus Stand Road Bindiganavile Nagaman- gala Taluk Mandya Karnataka-571802
478.	The Branch Manager Bookinakare Bookinakere R Pet Taluk, Mandya Karnataka-571812
479.	The Branch Manager Chinakurali PB No. 1, Chinakuralipandavapura Taluk Mandya, Karnataka-571455
480.	The Branch Manager Guthalu Regent Complex, Guthalu Road Mandya, Mandya Karnataka-571403
481.	The Branch Manager Hadli Megalapura Circle, Hadli Malavalli Taluk Mandya Karnataka-571430
482.	The Branch Manager Hallagere Hallagerebasaralu Hobli Mandya, Karnataka-571146

Sl. No.	Name of the Branch, Branch Address Code No.
483.	The Branch Manager Holalu (Bellary) PB No. 1, Main Road Holaluhuvinahadagali Taluk Bellary, Karnataka-583217
484.	The Branch Manager Hongahally PB No. 1, Hongahally Srirangapatna Taluk Mandya, Karnataka-571607
485.	The Branch Manager Kadaballi Bindaginavile Hobli Nagamangala Taluk Mandya Karnataka -571418
486.	The Branch Manager Kalamuddanadoddi No 145(1), Halagur Roadbharathinagar, K.M. Doddi Maddur Taluk Mandya, Karnataka-571422
487.	The Branch Manager Kalkuni No. 147, State Bank Road, Kalkuni, Malavalli Taluk Mandya, Karnataka-571424
488.	The Branch Manager Kikkeri PB No. 1, No. 117, Main Road Kikkeri K.R. Pet Talu Mandya, Karnataka-571423
489.	The Branch Manager Kothathi Mandya-Bannur Road Kothathi Mandya Karnataka-571402
490.	The Branch Manager Kyathanahalli No. 327(1), Main Road Kyathanahalli Pandavapura Taluk Mandya Karnataka-571427
491.	The Branch Manager Krishnarajpet PB No. 1, No. 259, Main Road Krishnarajapet Mandya Karnataka-571426
492.	The Branch Manager Mandya PB No. 1, Visveshwaraiah Road Mandya Mandya Karnataka-571401
493.	The Branch Manager Melkote No. 20, Marigudi Street Melkote Pandavapura Taluk Mandya Karnataka-571431
494.	The Branch Manager Nagamangala No. 1755, Mysore-Bangalore Road nagamangala Mandya Karnataka-571432
495.	The Branch Manager Nagoonahalli Chandagal Road, Nagoonahall Isrirangapatna Taluk Smandya, Karnataka-571805
496.	The Branch Manager Palahally Palahally Srirangapatna Taluk Mandya Karnataka-571438
497.	The Branch Manager Sivasamudram PB No. 1, No D-17, S N P Laneshivasamudrammal-vali Taluk Mandya Karnataka-571437
498.	The Branch Manager Srirangapatna PB No. 1, No 994947 Opp. Hotel Hariprasad Srirangapatna Taluk Mandya Karnataka-571438
499.	The Branch Manager V C Farm PB No. 1, V C Farm Mandya Karnataka-571405

Sl. No.	Name of the Branch, Code No.	Branch Address

STATE BANK OF BIKANER AND JAIPUR
HEAD OFFICE
JAIPUR

Branch to be notified in the Official Gazette under Rule 10(4) of Official Language Rules, 1976.

500. KAAPREN
Address:
Po-Kaapren
Dist-Bundi
Pin-323 301
Rajasthan

501. SISWALI
Address :
Pratap Chowk, Bus Stand
Po-Siswali
Dist-Baran
Pin-325206

502. TALERA
Address :
Kesshoria Patan Tiraha
Dist-Bundi
Pin-323021
Rajasthan

503. INDRAGARH
Address :
Community Bhawan, Ward No. 8,
Post-Indragarh
Dist-Bundi
Pin-323613
Rajasthan

504. ROOPNAGARH
Address :
Near Bus Stand
Po-Roopnagarh
Dist-Ajmer
Rajasthan

505. ARAIN
Address :
Near Power House Chouraha
Po-Arain
Dist-Ajmer
Pin-305814
Rajasthan

506. JHALAWAR MINI SECTT.
Address :
Post-Jhalawar
Dist-Jhalawar
Pin-326001
Rajasthan

507. R.C.P.C. JHALAWAR
Address :
Near Ghar Jhalawar
Post-Jhalawar
Dist-Jhalawar
Pin-326001
Rajasthan

508. VIGYAN NAGAR
Address :
Kalpataru Complex,
Post-Vigyan Nagar
Dist-Kota
Pin-324005
Rajasthan

509. SAWAI MADHOPUR
Address :
SBBJ, Bajrang Bhawan
Post-Sawai Madhopur
Dist-Sawai Madhopur
Pin-322001
Rajasthan

510. DAI BRANCH
Address :
Nainwa Road, Opp Krishi Upaj Bhawan
Post-Dei
Dist-Bundi
Pin-323802
Rajasthan

511. KAWAI BRANCH
Address :
Village-Kawai
Post-Kawai Salpura
Dist-Baran
Pin-325219
Rajasthan

512. SUKAR
Address :
Post-Sukar
Tehsil-Bamanwas
Dist-Sawai Madhopur
Rajasthan

513. CTTP CHOKI
Address :
CTTP Residential Colony
Choki Motipura
Tehsil-Chhabar
Dist-Baran
Pin-325220
Rajasthan

Sl. No.	Name of the Branch, Branch Address Code No.
514.	MEDICAL COLLEGE, KOTA Address : Medical College Compound Rangh Badi Road City-Kota Disti-Kota Pin-324005 Rajasthan
515.	RSMECC, UDAYPUR Address: Ist Floor Chetak Circle Post-Udaypur Pin-313001 Rajasthan
516.	HIRAN MAGARI Address: 2-G Block Near Community Centre Hiran Magari Sector-14 Udaypur, Rajasthan
517.	PRATAPGARH Address: Mahatama Gandhi Road Pratapgarh Pin-312605 Rajasthan
518.	SETHIN Address: A-23 Bapu Nagar, Main Road Sethin (Chittorgarh) Pin-312001 Rajasthan
519.	VASSI BRANCH Address: Dist-Dugarpur Pin-314036 Rajasthan
520.	SAWALA BRANCH Address: Near Bus Stand Udaypur Road, Sawala Pin-314002 Rajasthan
521.	BICHWADA BRANCH Address: Chhapiya Complex, Main Market Bichwara Dungarpur Pin-314801 Rajasthan
522.	KANOD BRANCH Address: Udaypur Road Post-Kanod Pin-313603 Rajasthan
523.	LAKADWAS BRANCH Address: Dist-Udaypur Pin-313012 Rajasthan
524.	BHILWARA Address: Bhilwara Dist-Bhilwara Pin-311001 Rajasthan
525.	KURUKSHETRA BRANCH Address: SCO 66, Sector-17 Dist-Krukshetra Pin-136118 Haryana

List of Branches/Offices of Indian Bank to be notified under Rule 10(4) in the Gazette of Government of India

Zonal Office Chandigarh

526	Indian Bank Tagore Nagar Branch 1105 Kiran Vila Tagore Nagar B Civil Lines Ludhiana 151505 Dist.-Ludhiana
527	Indian Bank Fatehgarh Nauban Branch C/O Guru Kashi University Sardoolgarh Road Talwandi Sabo Fatehgarh Naubad 151302 Dist.-Bathinda (Punjab)
528	Indian Bank Jujhar Nagar Branch Opp 39 West Maloya Road Village Jujhar Nagar 160014 Behlopur District Mohali (Punjab)

Sl. No.	Name of the Branch, Branch Address Code No.
529	Indian Bank Manasa Branch Neemwali Gali Manasa 151505 Dist.-Manasa Punjab
530	Indian Bank Samrala Branch Opp. to M G Complex Khanna Road Samrala-141114 Dist.-Ludhiana Punjab
531	Indian Bank Morinda Branch 277-278, Ward No. 8, Railway Road Morinda 140101 Dist.-Roopnagar Punjab
532	Indian Bank Dhoraha Branch Ajjaib Singh Complex Opp. to Flyover G T Road Dhoraha 136118 Dist.-Ludhiana Punjab
	Zonal Office Karnal
533	Indian Bank Zonal Office SCO 244-245, (FF & SF) Sector 12 Karnal 132001 (Haryana)
534	Indian Bank IMT Manesar Showroom No. 4-5-7-8, Raheja Ground Floor, Front Side IMT Manesar 122050 District Gurgaon Haryana
535	Indian Bank Khandsa Road Branch Chauhan Commercial Complex Near Hero Honda Chowk Khandsa Road Gurgaon 122001 (Haryana)
536	Indian Bank Sushant Lok Branch G-3, Vipul Square Block-B, Phase-1 Sushant Lok Gurgaon 122002 (Haryana)
537	Indian Bank Sector-17 Gurgaon Branch 580, Housing Board Colony Sector 17-A Market Gurgaon 122001 (Haryana)

Sl. No.	Name of the Branch, Branch Address Code No.
	आन्ध्र बैंक Andhra Bank **(भारत सरकार का उपक्रम A Government of India Undertaking)**
538	Andhra Bank Dammaiguda Branch 6-40, RGA Estate, Deepthi Srinagar, Madinaguda, Serilingampalli Mandal Ranga Reddy District, Hyderabad-500049
539	Andhra Bank Hastinapuram Branch Plot No. 8, Survey No. 2, 3 & 4, Sagar Ring Road, Hastinapuram Hyderabad-500079
540	Andhra Bank Bhagya Nagar Branch Vandana Arcade, D.No. 2-28-298/8 & 2-28-298/8/1, Bhagyanagar Kukatpally, Hyderabad-500072
541	Andhra Bank Moula-Ali Branch 40-52/4, Moula-Ali, Hyderabad-500040
542	Andhra Bank KPHB Colony Branch Plot No. 19 & 20, III Phase, Kukatpally, Hyderabad-500072
543	Andhra Bank Nadargul Branch Nadargul Village, Saroornagar Mandal, Hyderabad-501510
544	Andhra Bank Chevella Branch MBNR Complex, Main Road, Chevella, Ranga Reddy District-501503
545	Andhra Bank Nanakramguda Branch Andhra Bank, Apex College Complex, Plot No. 27-29, Financial District, Nanakramguda, Hyderabad-500032
546.	Andhra Bank Choutuppal Branch Door No. 5-390, Main Road Choutuppal-508252
547	Andhra Bank Chityala Branch H. No. 8-150 Opp: Police Station Chityal-508114

नई दिल्ली, 11 सितम्बर, 2013

का॰आ॰ 1996.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 21क के साथ पठित धारा 21 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्द्वारा, श्री दिनेश कुमार (जन्म तिथि 26.10.1966) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के दिल्ली स्थानीय बोर्ड में सदस्य नामित करती है।

[फा॰ सं॰ 3/33/2012-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 11th September, 2013

S.O. 1996.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 21, read with section 21A of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Shri Dinesh Kumar (DOB: 26.10.1966), as a Member on the Delhi Local Board of State Bank of India, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 3/33/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

(कार्यालय मुख्य आयकर आयुक्त)

जयपुर, 12 सितम्बर, 2013

का॰आ॰ 1997.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961(1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्द्वारा निर्धारण वर्ष 2012-13 एवं आगे के लिये कथित धारा के उद्देश्य से ''दी आईसीएफएआई यूनिवर्सिटी, खसरा नं॰ 505/1, गांव जामडोली, आगरा रोड, जयपुर (स्थाई खाता संख्या-AAAJT2439E) को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम, 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[अधिसूचना सं॰ 09/2013-14/क्रमांक: मुआआ/अआआ/(मु॰)/जय॰/10(23सी)(vi)/13-14/3474]

अतुलेश जिंदल, मुख्य आयकर आयुक्त

(Office of the Chief Commissioner of Income-tax)

Jaipur, the 12th September, 2013

S.O. 1997.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961(43 of 1961) read with rule 2CA of the Income-tax Rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves "THE ICFAI University, Khasra No. 505/1, Vill. Jamdoli, Agra Road, Jaipur" for the purpose of said section for the A.Y. 2012-13 onwards, provided that the society conforms to and complies with the provisions of sub-clause(vi) of clause(23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[Notification No. 9/2013-14/No. CCIT/JPR/ITO (Tech)/10(23C)(vi)/2013-14/3474]

ATULESH JINDAL, Chief Commissioner of Income-tax

नई दिल्ली, 6 जून, 2013

का॰आ॰ 1998.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथासंशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, वित्त मंत्रालय, वित्तीय सेवाएं विभाग के नियंत्रणाधीन निम्नलिखित बैंक की शाखाओं को, जिनके 80% से अधिक अधिकारियों/कर्मचारियों ने हिन्दी में कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है।

क्र॰ सं॰	बैंक का नाम	शाखाओं की संख्या
1.	आन्ध्रा बैंक	53
2.	भारतीय स्टेट बैंक	08
	कुल	**61**

[**सं॰ 11016/13/2013-हिन्दी**]
राजीव कुमार, सहायक निदेशक (रा॰भा॰)

आन्ध्रा बैंक

(भारत सरकार का उपक्रम)

क्रम सं॰	शाखा का नाम एवं पता
1.	आन्ध्रा बैंक पोदलकूर रोड शाखा, पद्मावती सेंटर, नेल्लोर-524004 आं॰प्र॰
2.	आन्ध्रा बैंक एस॰एस॰एन॰ डिग्री कालेज, मुगमूरू रोड, ओंगोल-523001 आं॰प्र॰
3.	आन्ध्रा बैंक दर्शी शाखा, एल॰पी॰ रोड, दर्शी-523 427, प्रकाशम जिला, आं॰प्र॰
4.	आन्ध्रा बैंक मार्टूर शाखा, राष्ट्रीय मार्ग-5, रजिस्ट्रार आफिस के नजदीक, मार्टूर-523301 आं॰प्र॰

क्रम सं॰	शाखा का नाम एवं पता
5.	आन्ध्रा बैंक स्वर्ण भारत ट्रस्ट शाखा, वेंकटाचलम-524320, नेल्लोर जिला, आं॰प्र॰
6.	आन्ध्रा बैंक कंभम शाखा, नायक स्ट्रीट, कंभम-523333, प्रकाशम जिला, आं॰प्र॰
7.	आन्ध्रा बैंक मेदरमेट्ला शाखा, मेदरमेट्ला-523212, प्रकाशम जिला, आं॰प्र॰
8.	आन्ध्रा बैंक कुरिचेडू शाखा, कुरिचेडू-523304, प्रकाशम जिला, आं॰प्र॰
9.	आन्ध्रा बैंक मुत्तुकूरू शाखा, मैन रोड, मुत्तुकूरू-524344 नेल्लोर जिला, आं॰प्र॰
10.	आन्ध्रा बैंक रिम्स (ओंगोल) शाखा, ओंगोल-523001 प्रकाशम जिला, आं॰प्र॰
11.	आन्ध्रा बैंक एस॰बी॰एम॰सी॰ शाखा, बपूजी मार्केट काम्पलेक्स, ओंगोल-523001, आं॰प्र॰
12.	आन्ध्रा बैंक धनलक्ष्मीपुरम शाखा (1834), मुत्तुकूरू रोड, नेल्लोर-524002, आं॰प्र॰
13.	आन्ध्रा बैंक मुसनूरू शाखा (1835), मुसनूरू (कावलि)-524201, नेल्लोर जिला, आं॰प्र॰
14.	आन्ध्रा बैंक बी॰वी॰ नगर शाखा (1537), सर्वोदय कालेज कैम्पस, नेल्लोर-524003, आं॰प्र॰
15.	आन्ध्रा बैंक विंजमूरू शाखा (1905), विनायक नगर, विंजमूरू-524228 नेल्लोर जिला, आं॰प्र॰
16.	आन्ध्रा बैंक तूर्पु नायुडु पालेम शाखा (1933) तूर्पु नायुडु पालेम-523272 प्रकाशम जिला, आं॰प्र॰
17.	आन्ध्रा बैंक येर्रगोंडपालेम (1941) कोत्तमासु काम्पलेक्स, मेन रोड, येर्रगोंडपालेम-523327 आं॰प्र॰
18.	आन्ध्रा बैंक पोदलकूरू शाखा (1980) पोदलकूरू-524345 नेल्लोर जिला आं॰प्र॰
19.	आन्ध्रा बैंक बेलतला शाखा भू-तल, मेघा प्लाजा बेलतला चिराली बेलतला, गुवाहाटी असम-781029
20.	आन्ध्रा बैंक देवघर शाखा, कोर्ट रोड, वीआईपी चौक देवघर नगर निगम के सामने, देवघर, झारखण्ड-814112
21.	आन्ध्रा बैंक दाउदपुर शाखा, ग्राम एवं पोस्ट - दाउदपुर, जिला-छपरा, बिहार-841205
22.	आन्ध्रा बैंक गयेशपुर शाखा आर्यन बिल्डिंग गयेशपुर, हावड़ा-711405
23.	आन्ध्रा बैंक मिर्जा शाखा पार्वती मार्केट, प्रथम तल मिर्जा, जिला-कामरूप, असम-781125
24.	आन्ध्रा बैंक मोहिउद्दीन नगर शाखा जयसवाल मार्केट, प्रथम तल, पश्चिम चौक, मोहीउद्दीन नगर, समस्तीपुर जिला, बिहार-845501
25.	आन्ध्रा बैंक छपरा शाखा माउना चौक, छपरा, बिहार-841301
26.	आन्ध्रा बैंक जानीपुर शाखा रॉय कॉलोनी, नया टोला, जानीपुर रोड, फुलवारी शरीफ, पटना, बिहार-801505
27.	आन्ध्रा बैंक बेगूसराय शाखा एम एस कॉम्पलेक्स, विष्णु सिनेमा चौक, मीरगंज, बेगूसराय, बिहार-851101
28.	आन्ध्रा बैंक क्षेत्रीय वसूली केन्द्र 9, रविन्द्र सारणी, कोलकाता-700001

क्रम सं॰	शाखा का नाम एवं पता
29.	आन्ध्रा बैंक शिलांग शाखा द आर्केड, जेल रोड, शिलांग–793001
30.	आन्ध्रा बैंक मुरलीधर गर्ल्स कॉलेज शाखा पी–411/14, कोलकाता–700029
31.	आन्ध्रा बैंक, चक्रधरपुर शाखा जीवन बीमा निगम भवन, रांची–चक्रधरपुर मेन रोड, चक्रधरपुर–833102 झारखण्ड
32.	आन्ध्रा बैंक तिनसुकिया शाखा रंगगोरा रोड, अपोलो क्लिनिक के नजदीक, तिनसुकिया, असम–786125
33.	आन्ध्रा बैंक सेक्टर 44डी शाखा एच एस सी ओ 357, सेक्टर 44 डी, चंडीगढ़–160047
34.	आन्ध्रा बैंक कुम्ब्रा शाखा कुम्ब्रा गांव, नजदीक गोल टैंक, सेक्टर–68, मोहाली, जिला पंजाब–160062
35.	आन्ध्रा बैंक जीरकपुर शाखा एस सी ओ 18, सिल्वर सिटी मेन, जीरकपुर, पंजाब–140603
36.	आन्ध्रा बैंक मोहाली शाखा एस. सी एफ. 93, फेज–7, एस ए एस नगर, मोहाली, पंजाब–160062
37.	आन्ध्रा बैंक खरड शाखा मुख्य चंडीगढ़ रोड, खरड, एन एच–21, डेसुमाजरा, जिला–मोहाली, पंजाब–140301
38.	आन्ध्रा बैंक नवांशहर शाखा अम्बेडकर चौक, बंगा रोड, नवांशहर, पंजाब–144514
39.	आन्ध्रा बैंक कुंडली शाखा एस सी ओ–39–40, एच एस आई आई डी सी, वाणिज्यिक भवन, कुंडली, जिला–सोनीपत, हरियाणा–131028
40.	आन्ध्रा बैंक रूड़की शाखा 74/1, रामनगर, विपरीत–दूरसंचार भवन, एन एच–73, रूडकी, उत्तराखंड–247667
41.	आन्ध्रा बैंक रोहतक शाखा एस सी एफ–15, तथा 15 ए, हुडा भवन, रोहतक, हरियाणा–403507
42.	आन्ध्रा बैंक हमीरा शाखा जिला–कपूरथला, पंजाब–144802
43.	आन्ध्रा बैंक होशियारपुर शाखा बी–11–1505/ए/3, वसुंधरा भवन, आर्य समाज रोड, शिमला पहाड़ी चौक, होशियारपुर, पंजाब–146001
44.	आन्ध्रा बैंक सिरसा शाखा श्री प्रकाश रतन कॉम्पलेक्स, बरनाला रोड, सिरसा–125055
45.	आन्ध्रा बैंक कुल्लू शाखा चंडीगढ़–मनाली एन एच–21, नजदीक पुनारा बस स्टैंड, अखाड़ा बाजार, कुल्लू–175101
46.	आन्ध्रा बैंक रामपुर शाखा रामपुर ग्राम पंचायत, रामपुर गांव, पायल तहसील, लुधियाना जिला, पंजाब–141418
47.	आन्ध्रा बैंक अम्बाला शाखा होटल दीप पैलेस, 177/1ए, राई बाजार, अम्बाला छावनी, अम्बाला, हरियाणा–133001
48.	आन्ध्रा बैंक चिन्नाईगूडेम शाखा कोत्तपेटा, चिन्नाईगूडेम, पश्चिम गोदावरी जिला–534316
49.	आन्ध्रा बैंक दूबचर्ला शाखा चेब्रोल रोड, दूबचर्ला, पश्चिम गोदावरी जिला–534112
50.	आन्ध्रा बैंक वेंकटरामन्नागूडेम शाखा डॉ॰ वाई॰एस॰आर॰हार्टिकल्चर यूनिवर्सिटी कैंपस, चिन्नाईगूडेम, पश्चिम गोदावरी जिला–534101

क्रम सं॰	शाखा का नाम एवं पता
51.	आन्ध्रा बैंक आसिफाबाद शाखा तारा काम्पलेक्स, मेन रोड, आसिफबाद, आदिलाबाद जिला–504293
52.	आन्ध्रा बैंक मेलचेरूवू शाखा पी॰ शंकर रेड्डी परिसर, मेलचेरूवू, नलगोंडा जिला–508246
53.	आन्ध्रा बैंक आंचलिक कार्यालय एस. सी. ओ. –200–201, सेक्टर–17 सी, चंडीगढ–160017

राजभाषा नियम (संघ के शासकीय प्रयोजनों के लिए प्रयोग) 1976 के नियम 10 के उप नियम 4 के अंतर्गत अधिसूचित किए जाने वाले कार्यालयों की सूची:—

1. भारतीय स्टेट बैंक,
क्षेत्रीय व्यवसाय कार्यालय,
स्थित कृषि विकास शाखा भवन, प्रथम तल,
डबवाली रोड़, सिरसा (हरियाणा)
पिनकोड–125005

2. भारतीय स्टेट बैंक,
क्षेत्रीय व्यवसाय कार्यालय,
स्थित होटल स्काई हॉक भवन, प्रथम तल
दिल्ली बाई पास रोड़, रोहतक (हरियाणा),
पिनकोड–124001

3. भारतीय स्टेट बैंक,
फुटकर परिसम्पित्तियाँ लघु एवं
मध्यम उद्यम शहरी ऋण केन्द्र,
हुडा कॅमर्शियल कॉम्पलेक्स,
रोहतक (हरियाणा), पिनकोड–124001

4. भारतीय स्टेट बैंक,
फुटकर परिसम्पित्तियाँ लघु एवं
मध्यम उद्यम शहरी ऋण केन्द्र,
मुख्य शाखा भवन, प्रथम तल,
शक्ति कॉलोनी, करनाल (हरियाणा),
पिनकोड–132001

5. भारतीय स्टेट बैंक,
फुटकर परिसम्पित्तियाँ लघु एवं
मध्यम उद्यम शहरी ऋण केन्द्र,
मुख्य शाखा भवन, प्रथम तल,
जी टी रोड़, पानीपत, (हरियाणा),
पिनकोड–132103

6. भारतीय स्टेट बैंक,
फुटकर परिसम्पित्तियाँ लघु एवं
मध्यम उद्यम शहरी ऋण केन्द्र,
मुख्य शाखा भवन, प्रथम तल,
दिल्ली रोड़, हिसार, (हरियाणा),
पिनकोड–125001

7. भारतीय स्टेट बैंक,
फुटकर परिसम्पित्तियाँ लघु एवं
मध्यम उद्यम शहरी ऋण केन्द्र,
अम्बाला शहर शाखा भवन,
अम्बाला शहर, (हरियाणा),
पिनकोड–133003

8. भारतीय स्टेट बैंक,
फुटकर परिसम्पित्तियाँ लघु एवं
मध्यम उद्यम शहरी ऋण केन्द्र,
तीसरा तल, प्रशासनिक कार्यालय भवन,
सिटी सेन्टर, सैक्टर–5, पंचकूला, (हरियाणा),
पिनकोड–134009

New Delhi, the 6th June, 2013

S.O. 1998.—In pursuance of sub-Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976 (as amended 1987) the central Government hereby notifies following branches of Banks under the control of Department of Financial Services, M/o Finance, whereof more than 80% officers/staffs have acquired working knowledge of Hindi.

S.No.	Name of Banks	Number of Branches
1.	Andhra Bank	53
2.	State Bank of India	08
	Total	**61**

[No. 11016/13/2013-Hindi]
RAJIV KUMAR, Asst. Director (O.L.)

ANDHRA BANK
(A Government of India Undertaking)

Sl. No.	Name and Address of the Branch
1.	Andhra Bank Podalakur Road Branch, Padmavathi Centre, Nellore-5824004 A.P.
2.	Andhra Bank S.S.N. Degree College Branch, Mungamur Road, Ongole-523001 A.P.

Sl. No.	Name and Address of the Branch
3.	Andhra Bank Darshi Branch, L. P. road, Darsi-523427, Prakasam District A.P.
4.	Andhra Bank Martur Branch, N.H.-5, Near Registrar's Office, Martur-523301 A.P.
5.	Andhra Bank Swarna Bharath Trust Branch, Venkatachalam 524320, Nellore Distt., A.P.
6.	Andhra Bank Cumbum Branch, Naick Street, Cumbum-523333, Prakasam District A.P.
7.	Andhra Bank Medarametla Branch, Medarametla-523212, Prakasam District, A.P.
8.	Andhra Bank Kurichedu Branch, Kurichedu-523304, Prakasam District, A.P.
9.	Andhra Bank Muthukur Branch, Main Road, Muthukur-524344, Nellore District, A.P.
10.	Andhra Bank RIMS Branch, Ongole-523001, Prakasam District, A.P.
11.	Andhra Bank S.B.M.C. Branch, Sri Bapuji Marketing Complex, Ongole-523001, A.P.
12.	Andhra Bank Dhanalaxmipuram Branch, Muthukur Road, Nellore-524002, A.P.
13.	Andhra Bank Musunur Branch, Musunur, Kavali-524201, Nellore District, A.P.
14.	Andhra Bank B.V. Nagar Branch, Sarvodaya College Campus, Nellore-524003, A.P.
15.	Andhra Bank Vinjamur Branch, Vinayak Nagar, Vinjamur-524228, A.P.
16.	Andhra Bank T. Naidu Palem Branch, Thurpunaidu Palem-523272, Prakasam District, A.P.
17.	Andhra Bank Yerragondapalem Branch, Kothamasu Complex, Main Road, Yerragondapalem, 523327, Prakasam Distt., A.P.
18.	Andhra Bank Podalakur Branch, Podalakur-524345 Nellore District A.P.
19.	Andhra Bank Beltola Branch, Ground Floor, Megha Plaza, Beltola, Chirali Beltola, Guwahati-781029.
20.	Andhra Bank Deoghar Branch, Court Road, VIP Chowk, Opp., Deoghar Nagar Nigam, Deoghar, Jharkhand-814112
21.	Andhra Bank Daudpur Branch, Vill.+P.O.-Daudpur, Distt-Chapra, Bihar-841205.
22.	Andhra Bank Gayespur Branch, Aryan Building, Gayespur, Howrah-711405.
23.	Andhra Bank Mirza Branch, Parvati Market, First Floor, Mirza, Distt-Kamrup, Assam-781125
24.	Andhra Bank Mohiuddin Nagar Branch, Jaiswal Market, First Floor, Paschim Chowk, Vill/P.O.-Mohiuddin Nagar, Distt-Samastipur, Bihar-845501.
25.	Andhra Bank Chapra Branch, Mauna Chowk, Chapra, Bihar-841301
26.	Andhra Bank Janipur Branch, Roy Colony, 'Naya Tola Janipur Road', Phulwari Sarif, Patna Bihar-801505.
27.	Andhra Bank Begusarai Branch, MS Complex, Vishnu Cinema Chowk, Mirganj, Begusarai, Bihar-851101.

Sl. No.	Name and Address of the Branch
28.	Andhra Bank Regional Collection Centre, 9, Ravindra Sarini, Kolkata-700 001.
29.	Andhra Bank Shillong Branch, The Arcade, Jail Road, Shillong-793001
30.	Andhra Bank Murlidhar Girls College, P-411/14, Gariahaat Road, Kolkata-700029.
31.	Andhra Bank Chakradharpur Branch, LIC Building, Ranchi-Chakradhapur Main Road, Chakradharpur-833102. Jharkhand
32.	Andhra Bank Tinsukia Branch, Ranga Gora Road, Near Apollo Clinic, Tinsukia Assam-786125.
33.	Andhra Bank Sector-44 Branch, HSCO 357, Sector 44D, Chandigarh-160047.
34.	Andhra Bank Kumbra Branch, Kumbra Village (PO), Near Goal Tank, Sector-68, Mohali, Punjab-160062
35.	Andhra Bank Zirakpur Branch, SCO 18, Silver City Main, Zirakpur, Punjab-140603
36.	Andhra Bank Mohali Branch, SCF 93, Phase-VII, SAS Nagar, Mohali, Punjab-160062
37.	Andhra Bank Kharar Main Branch, Chandigarh Road, Kharar, NH-21, Desumajra, Distt.-Mohali, Punjab-140301
38.	Andhra Bank Nawanshahar Branch, Ambedkar Chowk, Banga Road, Nawan Shahar, Punjab-144514.
39.	Andhra Bank Kundli Branch, SCO 39-40, HSIIDC, Commercial Complex, Kundli, Distt.-Sonipat, Haryana-131028
40.	Andhra Bank Roorkee Branch, 74/1, Ramnagar, Opp. Telephone Exchange, NH-73, Roorkee, (UK)-247667.
41.	Andhra Bank Rohtak Branch, SCF 15 & 15A, Huda Complex, Rohtak, Haryana-403507
42.	Andhra Bank Hamira Branch, Hamira, Distt.-Kapurthala, Punjab-144802
43.	Andhra Bank Hoshiarpur Branch, B-11-1505/A/3, Vasundhra Building, Arya Samaj Road, Shimla Pahari Chowk, Hoshiarpur, Punjab-146001
44.	Andhra Bank Sirsa Branch, Shree Prakash Ratna Complex, Barnala Road, Sirsa-125055
45.	Andhra Bank Kullu Branch, Chandigarh-Manauli NH-21, Near Old Bus Stand, Akhara Bazar, Kullu-175101
46.	Andhra Bank Rampur Branch, Rampur Gram Panchayat, Rampur Village, Payal Tehsil, Ludhiana District, Punjab-141418
47.	Andhra Bank Ambala Branch, Hotel Deep Palace, 177/1A, Rai Market, Ambala Cantt., Ambala, Haryana-133001
48.	Andhra Bank Chinnaigudem Branch, Kothapeta, Chinnaigudem, West Godavari Distt.-534316
49.	Andhra Bank Doobacherla Branch, Cebrole Road, Doobacherla, West Godavari-534112
50.	Andhra Bank Venkataramannagudem Branch, Dr. YSR Horticulture University Campus, Chinnaigudem-534101
51.	Andhra Bank Asifabad Branch, Tara Complex, Main Road, Asifabad, Adilabad Distt.-504293

क्रम सं॰	शाखा का नाम एवं पता
52.	Andhra Bank Melacheruvu Branch, P. Shankar Reddy Premises, Melacheruvu, Nalgonda Distt.-508246
53.	Andhra Bank Zonal Office, SCO-200-201, Sector-17C, Chandigarh-160017

List of Offices to be notified under Sub-Rule 10(4) of Rule 1976 of Official Language Rules (For the official purposes of Union Government)

1. State Bank of India
Regional Business Office,
Located at A.D.B. Branch Bhavan,
First Floor, Dabwali Road,
Sirsa (Haryana)
Pincode-125005

2. State Bank of India
Regional Business Office,
Located at Hotel Sky Hawk Bhavan,
First Floor, Delhi By Pass Road,
Rohtak (Haryana)
Pincode-124001

3. State Bank of India
Retail Assets Small & Medium Enterprises
City Credit Centre,
Huda Commercial Complex,
Rohtak (Haryana)
Pincode-124001

4. State Bank of India
Retail Assets Small & Medium Enterprises
City Credit Centre, Main Branch Bhavan,
First Floor, Shakti Colony,
Karnal (Haryana)
Pincode-132001

5. State Bank of India
Retail Assets Small & Medium Enterprises
City Credit Centre, Main Branch Bhavan,
First Floor, G.T. Road, Panipat (Haryana)
Pincode-132103

6. State Bank of India
Retail Assets Small & Medium Enterprises
City Credit Centre, Main Branch Bhavan,
First Floor, Delhi Road, Hisar (Haryana)
Pincode-125001

7. State Bank of India
Retail Assets Small & Medium Enterprises
City Credit Centre,
Ambala City Branch Bhavan,
Ambala City (Haryana)
Pincode-133003

8. State Bank of India
Retail Assets Small & Medium Enterprises
City Credit Centre, Third Floor
Administrative Office Bhavan, City Centre,
Sector-5, Panchkula (Haryana)
Pincode-134009

नई दिल्ली, 16 सितम्बर, 2013

का॰आ॰ 1999.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथासंशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, वित्त मंत्रालय, वित्तीय सेवाएं विभाग के नियंत्रणाधीन निम्नलिखित बैंक की शाखाओं को, जिनके 80% से अधिक अधिकारियों/कर्मचारियों ने हिन्दी में कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है।

क्र॰ सं॰	बैंक का नाम	शाखाओं की संख्या
1.	पंजाब नेशनल बैंक	33
2.	सिंडिकेट बैंक	24
3.	सिडबी	3
	कुल	60

[सं॰ 11016/13/2013-हिन्दी]
राजीव कुमार, सहायक निदेशक (रा॰ भा॰)

मंडल कार्यालय एनसीआर नोएडा

1. पंजाब नैशनल बैंक
गांव नूर नगर सिहानी
गाजियाबाद-201003
विशिष्ट संख्या-7562

2. पंजाब नैशनल बैंक
शाखा कार्यालय: रावली कलां
गाजियाबाद-201003
विशिष्ट संख्या-7681

3. पंजाब नैशनल बैंक
मंडल कार्यालय: एनसीआर नोएडा
सी-13, तीसरी मंजिल,
सैक्टर-01, नोएडा
विशिष्ट संख्या-7487

मंडल कार्यालय बठिंडा

4. पंजाब नैशनल बैंक
सादिक
जंड साहिब मार्ग
पोस्ट ऑफिस–सादिक
पिन–151212
विशिष्ट संख्या–7526

5. पंजाब नैशनल बैंक
महल कलां
पोस्ट ऑफिस–महल कलां
पिन–148104
विशिष्ट संख्या–7527

6. पंजाब नैशनल बैंक
सेहना
पोस्ट ऑफिस–सेहना
पिन–148103
विशिष्ट संख्या–7528

मंडल कार्यालय धर्मशाला

7. पंजाब नैशनल बैंक
शाखा कार्यालय: रझूं
उप–तहसील धीरा
तहसील पालमपुर
जिला: काँगड़ा
हिमाचल प्रदेश
पिन: 176065
विशिष्ट संख्या–7563

मंडल कार्यालय जयपुर

8. पंजाब नैशनल बैंक
शाखा कार्यालय: उनियारा
डाक: जैन चेतालय, मेन मार्केट
उनियारा
तहसील: उनियारा
जिला: टोंक
पिन–304024
(राजस्थान)
विशिष्ट संख्या–7269

9. पंजाब नैशनल बैंक
शाखा कार्यालय: शाहपुरा
डाक: शाहपुरा
तहसील: शाहपुरा
जिला: जयपुर
पिन: 303103
राजस्थान
विशिष्ट संख्या–7219

10. पंजाब नैशनल बैंक
शाखा कार्यालय: हिरनोदा
डाक: बस स्टैंड के पास, हिरनोदा
तहसील: फुलेरा
जिला: जयपुर
पिन: 303338
(राजस्थान)
विशिष्ट संख्या–7345

11. पंजाब नैशनल बैंक
शाखा कार्यालय: चाकसू
डाक: नीलकंठ धर्मकांटा के पास, टोंक रोड़
तहसील: चाकसू
जिला: जयपुर
पिन: 303901
(राजस्थान)
विशिष्ट संख्या–7344

12. पंजाब नैशनल बैंक
शाखा कार्यालय: न्यू आतिश मार्केट
ए–5, सन्नी मार्ट, न्यू आतिश मार्केट,
मानसरोवर
तहसील: सांगानेर
जिला: जयपुर
पिन: 302020
(राजस्थान)
विशिष्ट संख्या–7504

मंडल कार्यालय पटना

13. पंजाब नैशनल बैंक
शाखा कार्यालय: राजीव नगर
रोड नं॰: 19
पटना–800024
विशिष्ट संख्या–7578

14. पंजाब नैशनल बैंक
शाखा कार्यालय: सगुना मोड़
रामजयपाल रोड
न्यू बेलीरोड
पटना–801503
विशिष्ट संख्या–7577

मंडल कार्यालय बुलंदशहर

15. पंजाब नैशनल बैंक
शाखा कार्यालय: तलसपुर कलां
तलसपुर कलां रोड, कवार्सी
जिला: अलीगढ़
बुलंदशहर: 202001
(उत्तर प्रदेश)
विशिष्ट संख्या–7508

16. पंजाब नैशनल बैंक
शाखा कार्यालय: भीकमपुर
सम्भावली शुगर मिल के सामने (भीकमपुर)
जी॰ टी॰ रोड़
अलीगढ़
(उत्तर प्रदेश)
विशिष्ट संख्या–7507

मंडल कार्यालय मुजफ्फरपुर

17. पंजाब नैशनल बैंक
शाखा: शिवहर
पता: शिवहर
शहर: शिवहर
जिला: शिवहर
पिन: 843329
विशिष्ट संख्या–4993

18. पंजाब नैशनल बैंक
शाखा: बिदुपुर
पता: शिवहर
शहर: हाजीपुर
जिला: वैशाली
पिन: 844503
विशिष्ट संख्या–6016

19. पंजाब नैशनल बैंक
शाखा: जिला परिषद् भवन
पता: जिला परिषद भवन
स्टेशन रोड, मुजफ्फरपुर
शहर: मुजफ्फरपुर
जिला: मुजफ्फरपुर (बिहार)
पिन: 842001
विशिष्ट संख्या–6169

20. पंजाब नैशनल बैंक
शाखा: मुजफ्फरपुर
एलआईसी विभाग कार्यालय
पता: अघोरिया बाज़ार
दया कॉम्पलेक्स, मुजफ्फरपुर
शहर: मुजफ्फरपुर (बिहार)
जिला: मुजफ्फरपुर
पिन: 842002
विशिष्ट संख्या–6255

21. पंजाब नैशनल बैंक
शाखा: हाजीपुर, नबियादा
पता: हाजीपुर, नबियादा
स्टेशन रोड, मुजफ्फरपुर
शहर: हाजीपुर
जिला: हाजीपुर (बिहार)
पिन: 844001
विशिष्ट संख्या–6256

22. पंजाब नैशनल बैंक
शाखा: एम॰ पी॰ सांइस कॉलेज
पता: गोबरशाही चौक
शहर: मुजफ्फरपुर
जिला: मुजफ्फरपुर (बिहार)
पिन: 842002
विशिष्ट संख्या–6306

23. पंजाब नैशनल बैंक
शाखा: मुद्रा तिजोरी, छपरा
पता: हथुआ मार्केट, छपरा
शहर: छपरा
जिला: सारण (बिहार)
पिन: 841301
विशिष्ट संख्या–7120

24. पंजाब नैशनल बैंक
शाखा: मुद्रा तिजोरी, जे॰ एल॰ रोड
पता: जवाहर लाल रोड, मुजफ्फरपुर
शहर: मुजफ्फरपुर
जिला: मुजफ्फरपुर (बिहार)
पिन: 842001
विशिष्ट संख्या–7121

25. पंजाब नैशनल बैंक
शाखा: मुद्रा तिजोरी, सिवान
पता: बबुनिया मोड़, सिवान
शहर: सिवान
जिला: सिवान (बिहार)
पिन: 841226
विशिष्ट संख्या–7122

26. पंजाब नैशनल बैंक
शाखा: मुद्रा तिजोरी, मोतिहारी
पता: मेन रोड़, मोतिहारी
शहर: मोतिहारी
जिला: पूर्वी चम्पारण (बिहार)
पिन: 845401
विशिष्ट संख्या–7123

27. पंजाब नैशनल बैंक
शाखा: पीएनबी, नरईपुर
तिरुपती शुगर मिल के नजदीक
बगहा–2
शहर: बगहा
जिना: पूर्वी चम्पारण (बिहार)
पिन: 845105
विशिष्ट संख्या–7164

28. पंजाब नैशनल बैंक
शाखा: चकिया

पता: रूपमहल सिनेमा के सामने
डाकघर: चकिया
शहर: चकिया
जिला: पूर्वी चम्पारण (बिहार)
पिन: 845412
विशिष्ट संख्या–7211

29. पंजाब नैशनल बैंक
शाखा: नरकटियागंज
पता: उत्तर बिहार ग्रामीण बैंक के सामने, मेन रोड
शहर: नरकटियागंज
जिला: पश्चिमी चम्पारण (बिहार)
पिन: 845455
विशिष्ट संख्या–7212

30. पंजाब नैशनल बैंक
शाखा: सुरसंड असली
पता: सुरसंड चौक
डाकघर: सुरसंड
शहर: सुरसंड
जिला: सीतामढ़ी (बिहार)
पिन: 843331
विशिष्ट संख्या–7214

31. पंजाब नैशनल बैंक
शाखा: भोरे
पता: डॉ॰ चौधरी क्लीनिक, मीरगंज के सामने, भोरे
शहर: भोरे
जिला: गोपालगंज (बिहार)
पिन: 841426
विशिष्ट संख्या–7323

32. पंजाब नैशनल बैंक
शाखा: बरबट्टा, सोनपुर
पता: डीआरएम कार्यालय
बरबट्टा, सोनपुर
शहर: सोनपुर
जिला: सारण (बिहार)
पिन: 841101
विशिष्ट संख्या–7555

33. पंजाब नैशनल बैंक
शाखा: मुजफ्फरपुर, बैक ऑफिस
पता: मुजफ्फरपुर, बैक ऑफिस, जे॰ एल॰ रोड़, बिहार
शहर: मुजफ्फरपुर
जिला: मुजफ्फरपुर (बिहार)
पिन: 842001
विशिष्ट संख्या–6873

सिंडिकेटबैंक, राजभाषा प्रभाग, प्रधान कार्यालय: मणिपाल–576104

1. सिंडिकेट बैंक
अकबरपुर शाखा
मकान सं॰–213
नया नं 175/4, वार्ड नं 3
मोहसिनपुर, मन्सूरपुर
पी॰डब्ल्यू॰डी॰ आफिस के सामने
अकबरपुर
जिला: अंबेडकरनगर
राज्य: उत्तर प्रदेश
पिन: 224122

2. सिंडिकेटबैंक
मिर्जापुर शाखा
29क तथा 29ख
वार्ड नं 8 चौबे टोला
डंकिनगंज
जिला: मिर्जापुर
राज्य: उत्तर प्रदेश
पिन: 231001

3. सिंडिकेटबैंक
रामा डेन्टल कालेज शाखा
लखनपुर, A-1/8
जिला: कानपुर
राज्य: उत्तर प्रदेश
पिन: 208024

4. सिंडिकेटबैंक
महाराजगंज शाखा
भूतल, प्लॉट नं–1066
वार्ड नं–14
फरेन्डा रोड
जिला: महाराजगंज
राज्य: उत्तर प्रदेश
पिन: 273303

5. सिंडिकेटबैंक
हरदोई शाखा
परिसर नं–471
लाईनपुरवा
सिविल लाइन्स
जिला: हरदोई
राज्य: उत्तर प्रदेश
पिन: 241001

6. सिंडिकेटबैंक
मंझनपुर शाखा
आराजी नं॰ 249
न्यू होलेंड ट्रेक्टर एजेंसी के पास
मंझनपुर ओ॰एस॰ए॰ रोड

जिला: कौशाम्बी
राज्य: उत्तरप्रदेश
पिन: 212207

7. सिंडिकेटबैंक
कानपुर किदवईनगर शाखा
वाई ब्लाक, मकान नं॰ 1339
किदवई नगर
जिला: कानपुर
राज्य: उत्तरप्रदेश
पिन: 208011

8. सिंडिकेटबैंक
शाहाबाद शाखा
भूतल म॰नं॰ 90
मोहल्ला चौक
जिला: हरदोई
राज्य: उत्तर प्रदेश
पिन: 241124

9. सिंडिकेटबैंक
हैदरगढ़ शाखा
एस॰बी॰आई॰ के पास (नई शाखा)
पिओर मिठाई वार्ड
लखनऊ- सुल्तानपुर नेशनल हाइवे
जिला: बाराबंकी
राज्य: उत्तरप्रदेश
पिन: 227301

10. सिंडिकेटबैंक
बलरामपुर शाखा
मकान नं॰ 62
मोहल्ला नया बाजार
जिला: बलरामपुर
राज्य: उत्तर प्रदेश
पिन: 271201

11. सिंडिकेटबैंक
भिंगा शाखा
भूतल, इलाहाबाद बैंक के पास
मो॰ बन्दरहा लकड़ी मंडी
भिंगा सिरसिया रोड
जिला: श्रावस्ती
राज्य: उत्तरप्रदेश
पिन: 271831

12. सिंडिकेटबैंक
बाजपुर शाखा
रामराज रोड
कॉरपोरेशन बैंक के सामने
बाजपुर
जिला: उधमसिंहनगर
राज्य: उत्तराखंड
पिन: 262401

13. सिंडिकेटबैंक
बिलासपुर शाखा
कामरी रोड
आनंदनगर
बी॰एस॰एन॰एल॰ऑफिस के पास
जिला: रामपुर
राज्य: उत्तरप्रदेश
पिन: 244921

14. सिंडिकेटबैंक
बिलारी शाखा
सहकारी गन्ना विकास समिति
चंदौसी रोड
जिला: मुरादाबाद
राज्य: उत्तरप्रदेश
पिन: 244411

15. सिंडिकेटबैंक
पीलीभीत शाखा
शुक्ला कॉम्प्लेक्स
गांधी स्टेडियम रोड
जिला: पीलीभीत
राज्य: उत्तरप्रदेश
पिन: 262001

16. सिंडिकेटबैंक
गोपालगंज शाखा
ठाकुर मेंशन
श्याम सिनेमा रोड
जिला: गोपालगंज
राज्य: बिहार
पिन: 841428

17. सिंडिकेटबैंक
बक्सर शाखा
थाना रोड
समाशोधन गृह के सामने
बक्सर
राज्य: बिहार
पिन: 802101

18. सिंडिकेटबैंक
अडाजण सूरत शाखा
शॉप सं॰ 6 से 11
अखंड आनंद कांप्लेक्स
9 स्क्वायर के पास
हनी पार्क, मेन रोड
जिला: सूरत
राज्य: गुजरात
पिन: 385009

19. सिंडिकेटबैंक
धारंगधरा शाखा
सं॰ 3, भूतल
परिवार एवेन्यू
ममताबेन अस्पताल के पास
क्लब रोड, धारंगधरा
जिला: सुरेन्द्रनगर
राज्य: गुजरात
पिन: 363310

20. सिंडिकेटबैंक
वढ़वाण शाखा
शॉप सं॰ 11एवं 12, भूतल
इंद्रप्रस्थ, 80 फूट रोड़
तपोवन बंगला के सामने
भक्तिनगर सर्किल के पास
वढ़वाण, जिला: सुरेन्द्रनगर
राज्य: गुजरात
पिन: 363030

21. सिंडिकेटबैंक
दाहोद शाखा
4207ए नेताजी बाज़ार पादव रोड,
महेश दुग्धालय के सामने
जिला: दाहोद
राज्य: गुजरात
पिन: 389151

22. सिंडिकेटबैंक
गोधरा शाखा
सं॰ 1 से 6
लोवर ग्राउंड फ्लोर
जय जलरमा प्लाज़ा
एस॰टी॰ बस स्टैंड के सामने
साइन्स कॉलेज के पीछे
गोधरा, जिला: पंचमहल
राज्य: गुजरात
पिन: 389001

23. सिंडिकेटबैंक
एआरएम अहमदाबाद शाखा
नेप्च्यून टावर्स
(नेहरू ब्रिज के सामने)
नवरंगपुरा, अहमदाबाद
जिला: अहमदाबाद
राज्य: गुजरात
पिन: 380009

24. सिंडिकेटबैंक
नाना मवा राजकोट शाखा
गोल्डन व्यू, पहला तल
अर्जुन पार्क सोसाइटी
नाना मावा रोड, राजकोट
जिला: राजकोट
राज्य: गुजरात
पिन: 360005

भारतीय लघु उद्योग विकास बैंक

1. भारतीय लघु उद्योग विकास बैंक, जोधपुर शाखा कार्यालय
ई-4, भूतल, सुविधा कॉम्प्लेक्स, शास्त्री नगर
जोधपुर, राजस्थान-342003

2. भारतीय लघु उद्योग विकास बैंक, किशनगढ़ शाखा कार्यालय
प्रथम तल, अग्रसेन भवन के पास
जयपुर-अजमेर मार्ग, मदनगंज, किशनगढ़ राजस्थान-305801

3. भारतीय लघु उद्योग विकास बैंक, क्षेत्रीय शाखा कार्यालय-जयपुर
प्रथम तल, उमराव कॉम्प्लेक्स
संसार चन्द्र मार्ग, जयपुर, राजस्थान-302001

New Delhi, the 16th September, 2013

S.O. 1999.—In pusuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976 (as amended 1987) the Central Government hereby notifies following branches of Banks under the Control of Department of Financial Services, M/O Finance, whereof more than 80% officers/staffs have acquired working knowledge of Hindi.

Sl. No.	Name of Banks	Number of branches
1.	Punjab National Bank	33
2.	Syndicate Bank	24
3.	Sidbi	3
	Total	60

[No. 11016/13/2013-Hindi]
RAJIV KUMAR, Asst. Director (O.L)

Circle Office NCR NOIDA

1. Punjab National Bank
Village-Noor Nagar Sinhani
Gaziabad-201003
Disn No. 7562

2. Punjab National Bank
B.O.-Ravali Kalan
Gaziabad-201003
Disn No. 7681

3. Punjab National Bank
Circle Office-NCR Noida
C-13, 3rd Floor
Sector-1, Noida
Disn No. 7487

Circle Office BATHINDA

4. Punjab National Bank
Jand Sahib Road
P.O.- Sadiq
Pin Code-151212
Sadiq
Disn No. 7526

5. Punjab National Bank
Mehal Kalan
P.O.-Mehal Kalan Pin Code-148104
Mehal Kalan
Disn No. 7527

6. Punjab National Bank
Sehna
P.O.-Sehna
Pin Code-148103
Sehna
Disn No. 7528

Circle Office Dharamshala

7. Punjab National Bank
B/O Rajhoon
Sub Teh.-Dheera
Tehsil-Palampur
District Kangra
Himachal Pardesh
Pin-176065
Disn No. 7563

Circle Office Jaipur

8. Punjab National Bank
B.O.-Uniara
Post: Jain Chetalaya,
Main Market
Uniara
Tehsil: Uniara
District: Tonk
Pin: 304024
(Rajasthan)
Disn No.: 7269

9. Punjab National Bank
B.O.-Shahpura
Post: Shahpura
Tehsil: Shahpura
District: Jaipur
Pin: 303103
(Rajasthan)

10. Punjab National Bank
B.O.-Hirnoda
Post: Near Bus Stand
Tehsil: Phulera
District: Jaipur
Pin: 303338
(Rajasthan)
Disn No.: 7345

11. Punjab National Bank
B.O.-Chaksu
Post: Near Neelkanth Dhram
Kanta, Tonk Road
Tehsil: Chaksu
District: Jaipur
Pin: 303901
(Rajasthan)
Disn No. 7344

12. Punjab National Bank
B.O.-New Aatish Market
Post: A-5, Sunny Mart, New
Aatish Market, Mansarovar
Tehsil: Sanganer
District: Jaipur
Pin: 302020
(Rajasthan)
Disn No.: 7504

Circle Office Patna

13. Punjab National Bank
B.O.-Rajiv Nagar
Road No.: 19
Patna: 800024
Disn No.: 7578

14. Punjab National Bank
B.O.-Saguna More
Ramjaypal Road
New Bailey Road
Patna: 801503
Disn No.: 7577

Circle Office Bulandshahar

15. Punjab National Bank
B.O- Talaspur Kalan
Talaspur Kalan Road Kwarsi
Aligarh
Bulandshahar: 202001
Disn No.: 7508

16. Punjab National Bank
B.O.-Bhikampur
Opp. Simbhawali Sugar Mill
(Bhikampur) G.T. Road
Aligarh
Disn No.: 7507

Circle Office Muzaffarpur

17. Punjab National Bank
B.O.: Sheohar
Address: Sheohar
City: Sheohar
Dist.: Sheohar
Pin-843329
Disn No.: 4993

18. Punjab National Bank
B.O.: Bidupur
Address: Bidupur
City: Hajipur
Dist.: Bidupur
Aishali (Bihar)
Pin-844503
Disn No.: 6016

19. Punjab National Bank
B.O.: Zila Parishad Bhawan
Address: Zila Parishad Bhawan, Station Road, Muzaffarpur
City: Muzaffarpur
Dist.: Muzaffarpur (Bihar)
Pin-842001
Disn No.: 6169

20. Punjab National Bank
B.O.: Muzaffarpur, LIC Div. Office
Address: Aghoria Bajar, Daya Complex, Muzaffarpur
City: Muzaffarpur
Dist.: Muzaffarpur (Bihar)
Pin-842002
Disn No.: 6255

21. Punjab National Bank
B.O.: Hajipur, Nabiyada
Address: Hajipur Nabiyada Station Road, Muzaffarpur
City: Hajipur
Dist.: Vaishali (Bihar)
Pin-844001
Disn No.: 6256

22. Punjab National Bank
B.O.: M.P. Science College
Address: Gobershahi Chowk
City: Muzaffarpur
Dist.: Muzaffarpur (Bihar)
Pin-842002
Disn No.: 6306

23. Punjab National Bank
B.O.: Currency Chest, Chhapra
Address: Hathua Market, Chhapra
City: Chhapra
Dist.: Saran (Bihar)
Pin 841301
Disn No.: 7120

24. Punjab National Bank
B.O.: Currency Chest, J.L. Road
Address: Jawahar Lal Road Muzaffarpur
City Muzaffarpur
Dist.: Muzaffarpur (Bihar)
Pin-842001
Disn No.: 7121

25. Punjab National Bank
B.O.: Currency Chest, Siwan
Address: Babunia, Siwan
City: Siwan
Dist.: Siwan (Bihar)
Pin-841226
Disn No.: 7122

26. Punjab National Bank
B.O.: Currency Chest, Motihari
Address: Main Road, Motihari
City: Motihari
Dist.: East Champaran (Bihar)
Pin-845401
Disn No.:7123

27. Punjab National Bank
B.O.: Naraipur
Near Tirupati Sugar Mill, Bagha-2
City: Bagha
Dist.: East Champaran (Bihar)
Pin-845105
Disn No.: 7164

28. Punjab National Bank
B.O.: Chakia
Address: In front of Rupmahal Takies
PO: Chakia
City: Chakia
Dist.: East Champaran (Bihar)
Pin-845412
Disn No.: 7211

29. Punjab National Bank
B.O.: Narkatiaganj
Address: In front, of Uttar Bihar Gramin Bank, Main Road Narkatiaganj
City: Narkatiaganj
Dist.: West Champaran (Bihar)
Pin-845455
Disn No.:7212

30. Punjab National Bank
B.O.: Sursand Asli
Address: Sursand Chowk
PO: Sursand
City: Sursand
Dist: Sitamarhi (Bihar)
Pin-843331
Disn No.: 7214

31. Punjab National Bank
B.O.: Bhore
Address: In front of Choudhary Clinic Mirganj, Bhore
City: Bhore
Dist.: Gopalganji (Bihar)
Pin-841426
Disn No.: 7323

32. Punjab National Bank
B.O.: Barbatta, Sonepur
Address: DRM Office, Baratta, Sonepur, Bihar
City: Sonepur

Dist.: Saran (Bihar)
Pin-841101
Disn No.: 7555

33. Punjab National Bank
B.O.: Muzaffarpur Back Office
Address: Muzaffarpur Back Office' J.L. Road, Bihar
City: Muzaffarpur
Dist.: Muzaffarpur (Bihar)
Pin-842001
Disn No.:6873

1. Syndicate Bank
Akbarpur Branch
House No. 213
New No. 175/4, Ward No. 3
Mohsinpur, Mansoorpur
Opp. P.W.D. Office
Akbarpur
Dist; Ambedkarnagar
State: Uttar Pradesh
Pin : 224122

2. Syndicate Bank
Mirzapur Branch
29A&29B
Ward No. 8
Chaubey Tola
Dankinganj
Dist: Mirzapur
State: Uttar Pradesh
Pin: 231001

3. Syndicate Bank
Rama Dental College Branch
Lakhanpur A-1/8
Dist: Kanpur
State Uttar Pradesh
Pin: 208024

4. Syndicate Bank
Maharajganj Branch
Ground Floor, Plot No. 1066
Ward No. 14
Farenda Road
Dist: Maharajganj
State Uttar Pradesh
Pin: 273303

5. Syndicate Bank
Hardoi Branch
Premises No. 471
Linepura
Civil Lines
Dist: Hardoi
State Uttar Pradesh
Pin: 241 001

6. Syndicate Bank
Manjhanpur Branch
Aaraji No. 249
Near New Holland Tractor Agency
Manjhanpur O.S.A. Road
Dist: Kaushambi
State Uttar Pradesh
Pin: 212207

7. Syndicate Bank
Kanpur Kidwaingar Branch
Y. Block H. No. 1339
Kidwainagar
Dist: Kanpur
State Uttar Pradesh
Pin: 208 011

8. Syndicate Bank
Shahabad Branch
Ground Floor H. No. 90
Mohalla Chowk
Shahabad
Dist: Hardoi
State Uttar Pradesh
Pin: 241 124

9. Syndicate Bank
Haidergarh Branch
Near SBI (New Branch)
Piyor Mithai Ward
Lucknow-Sultanpur
National Highway
Dist: Barabanki
State Uttar Pradesh
Pin: 227 301

10. Syndicate Bank
Balrampur Branch
H. No. 62
Mohalla Naya Bazar
Dist: Balrampur
State Uttar Pradesh
Pin: 271 201

11. Syndicate Bank
Bhinga Branch
Ground Floor
Near Allahabad Bank
Mohalla Bandraha Lakri Mandi
Bhinga Sirsiya Road
Dist: Shravasti
State Uttar Pradesh
Pin: 271 831

12. Syndicate Bank
Bajpur Branch
Ramraj Road
Corporation Bank
Bajpur
Dist: Udhamsingh Nagar
State Uttaranchal
Pin: 262 401

13. Syndicate Bank
Bilaspur Branch
Kamri Road
Anand Nagar

Near BSNL Office
Dist: Rampur
State Uttar Pradesh
Pin: 244 921

14. Syndicate Bank
Bilari Branch
Sahakari Ganna Vikas Samiti
Chandausi Road
Dist: Moradabad
State Uttar Pradesh
Pin: 244 411

15. Syndicate Bank
Pilibhit Branch
Shukla Complex
Gandhi Stadium Road
Dist: Pilibhit
State Uttar Pradesh
Pin: 262 001

16. Syndicate Bank
Gopalganj Branch
Thakur Mansion
Shyam Cinema Road
Dist: Gopalganj
State: Bihar
Pin: 841 428

17. Syndicate Bank
Buxur Branch
Thana Road
Opp. Clearing House
Buxur
State: Bihar
Pin: 802 101

18. Syndicate Bank
Adajan Surat Branch
Shop No. 6 to 11
Akhand Anand Complex
Near 9 Square
Honey Park, Main Road
Dist: Surat
State: Gujarat
Pin: 385 009

19. Syndicate Bank
Dhrangadhra Branch
No. 3, Ground Floor
Parivar Avenue
Near Mamathaben Hospital
Club Road, Dhrangadhra
Dist: Surendranagar
State: Gujarat
Pin: 363 310

20. Syndicate Bank
Wadhwan Branch
Shop No. 11 & 12, Ground Floor
Indraprastha, 80Ft. Road
Opp. Tapovan Bunglows
Near Bhakthinagar Circle
Wadhwan,
Dist: Surendranagar
State: Gujarat
Pin: 363 030

21. Syndicate Bank
Dahod Branch
4207, Netaji Bazar, Padav Road
Opp. Mahesh Dugdhalay
Dist: Dahod
State: Gujarat
Pin: 389 151

22. Syndicate Bank
Godhra Branch
No. 1 to 6
Lower Ground Floor
Jai Jalram Plaza
Opp. S. T. Bus Stand
Behind Science College
Godhra, Dist: Panchmahal
State: Gujarat
Pin: 389 001

23. Syndicate Bank
ARM, Ahmedabad Branch
Neptune Towers
(Opp. Nehru Bridge)
Navarangpura, Ahmedabad
Dist: Ahmedabad
State: Gujarat
Pin: 380 009

24. Syndicate Bank
Nana Mawa Rajkot Branch
Golden View, First Floor
Arjun Park Society
Nana Mawa Road, Rajkot
Dist: Rajkot
State: Gujarat
Pin: 360 005

Small Industries Development Bank of India

1. Small Industries Development Bank of India, Jodhpur Branch Office
E-4, Bhutal, Suvidha Complex, Shastri Nagar
Jodhpur, Rajasthan-342003
2. Small Industries Development Bank of India, Kishan Garh Branch Office
1st Floor, Near Agrasen Bhavan
Jaipur-Ajmer Road, Madanganj, Kishangarh
Rajasthan-305801
3. Small Industries Development Bank of India, Zonal Office-Jaipur
1st Floor, Umrao Complex
Sansar Chandra Road, Jaipur, Rajasthan-302001

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2000.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:—

अनुसूची

क्रम सं॰	लाइसेंस संख्या सीएम/एल	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा	भाग	अनु	वर्ष
1	2	3	4	5	6	7	8	9
1.	एल-4812867	02.07.2013	मै॰ एवन बाइव्हीलर एक्सेसरीज प्रा॰लि॰, प्लाट नं॰ 421, सेक्टर 8, आइएमटी मानेसर, जिला गुडगांव - 122006 (हरियाणा)	मोटरसाईकिल चालकों के लिए संरक्षी हैल्मेट	4151	-	-	1993
2.	एल-4812059	03.07.2013	मै॰ श्री श्याम एक्वा मिनरल्स ए-9, कॉवरा इण्डस्ट्रीयल एरिया, जिला फरीदाबाद - 121001, (हरियाणा)	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
3.	एल-4813970	10.07.2013	मै॰ थमो केब्स, एचपीएल-सैक्टर 10 के पीछे, पावर हाउस, दिल्ली बाई पास रोड, उत्तम नगर, जिला रिवाड़ी-123401 (हरियाणा)	1100 वोल्ट तक की कार्यकारी वोल्टता के लिए पीवीसी रोधित केबल	694	-	-	1990
4.	एल-4814063	15.07.2013	मै॰ एस एण्ड पी इंटरप्राइसिस, एमसीएफ 1238-1239, गली नं॰ 54, संजय कालोनी, सेक्टर 23, जिला, फरीदाबाद - 121005 (हरियाणा)	निमज्जनीय पम्पसेट	8034	-	-	2002

1	2	3	4	5	6	7	8	9
5.	एल-4814164	15.07.2013	मै॰ प्रेमजी वालजी एण्ड सन्स (ज्वैलर्स) प्रा॰लि॰ जीएफ-15 गोल्ड सूक, ब्लॉक सी, सुशांत लोक, फेस - I, जिला गुडगांव - 122002 (हरियाणा)	स्वर्ण एवं स्वर्ण मिश्र धातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
6.	एल-4815166	17.07.2013	मै॰ रोनक इण्टरप्राइसिस गांव सादपुर (चांग), डाकघर, पाल्हावास, तहसील व जिला रेवाड़ी - 123035 (हरियाणा)	पूर्वढलित कंक्रीट पाइप (प्रबलन सहित और रहित)	458	-	-	2003
7.	एल-4818879	17.07.2013	मै॰ सवर्ण इनफ्राटेल प्रा॰ लि॰ 74 माइलस्टोन, गांव मितरोल, दैहली मथुरा रोड, गुलाब पब्लिक स्कूल से अगला होड़ल टोल प्लाजा से पहले, जिला पलवल - 121105 (हरियाणा)	अनुप्रस्थ जुड़े हुए पौलीइथाइलीन विद्युतरोधी ताप स्थायी ढके केबल भाग-1, 1100 वोल्ट तक तथा सहित की कार्यकारी वोल्टता के लिए	7098	01	-	1988
8.	एल-4816572	19.07.2013	मै॰ सवर्ण इनफ्राटेल प्रा॰ लि॰ 74, माइलस्टोन, गांव मितरोल दैहली मथुरा रोड, गुलाब पब्लिक स्कूल से अगला, होड़ल टोल प्लाजा से पहले, जिला पलवल-121105 (हरियाणा)	पीवीसी इंसुलेटिड (हैवी डयूटी) इलेक्ट्रीक केबल 1100 वोल्ट तक तथा सहित की कार्यकारी वोल्टता के लिए	1554	01	-	1988
9.	एल-4814568	22.07.2013	मै॰ कुनाल इण्डस्ट्रीज, हाउसिंग बोर्ड के निकट, बल्लभगढ़,सैक्टर-2, जिला फरीदाबाद-121004 (हरियाणा)	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
10	एल-4816370	30.07.2013	मै॰ कार्तिक कन्टेनर्स प्रा॰ लि॰ असौदा मोड़, फनटाउन के पास असौदा, बहादुरगढ़-124505 जिला झज्जर, (हरियाणा)	बन्द सिरे वाले बड़े ड्रम भाग-1 ग्रेड-ए ड्रम	1783	01	-	1993

[सं॰ सीएमडी/13:11]

बिन्दु कुमार, अनुभाग अधिकारी

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 4th September, 2013

S.O. 2000.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:

SCHEDULE

Sl. No.	Licences No. CM/L-	Grant Date	Name & Address of the Licensee	Title of the Standard	IS No.	Part.	Sec.	Year
1	2	3	4	5	6	7	8	9
01.	एल-4812867	02.07.2013	M/s. Avon Biwheeler Accessories Pvt. Ltd., Plot No. 421, Sector-8, IMT Manesar, Distt. Gurgaon-122006, (Haryana)	Protective Helmets of Motorcycle Riders	4151	-	-	1993
02.	L-4812059	03.07.2013	M/s. Sri Shyam Aqua, Minerals, A-9, Kanwara Industrial Area, Faridabad-121001, (Haryana)	Packaged drinking water (Other than Natural) Mineral Water)	14543	-	-	2004
03.	L-4813970	10.07.2013	M/s. Thermo Cabs, Behind HPL-Sector(10), Power House, Delhi Bye Pass Road, Uttam Nagar, Distt. Rewari-123401, (Haryana)	PVC Insulated Cables For Working Voltage Upto and Including 1100V	694	-	-	1990
04.	L-4814063	15.07.2013	M/s. S & P Enterprises, MCF 1238-1239, Gali No. 54, Sanjay Colony, Sector-23, Distt. Faridabad-121005, (Haryana)	Submersible Pumpsets	8034	-	-	2002

1	2	3	4	5	6	7	8	9
05.	L-4814164	15.07.2013	M/s. Premji Valji & Sons (Jewellers) Pvt. Ltd. GF-15, Gold Souk, Block-C, Sushant Lok, Phase-I, Distt. Gurgaon-122002, (Haryana)	Gold & Gold Alloys, Jewellery/Artefacts- Fineness and Marking	1417	-	-	1999
06.	L-4815166	17.07.2013	M/s. Ronak Enterprises Village Sad5309pur (Chang), P.O. Palhawas, Tehsil & Distt. Rewari- 123035 (Haryana)	Precast Concrete Pipes (With and Without Reinforcement)	458	-	-	2003
07.	L-4818879	17.07.2013	M/s. Swarn Infratel Pvt. Ltd., 74 Milestone, Village Mitrol, Delhi Mathura Road, Next to Gulab Public School, Before Hodal Toll Plaza, Distt. Palwal-121105, (Haryana)	Crosslinked Polyethylene Insulated Thermoplastic Sheathed Cables Part-1 for working voltage upto and including 1100 V	7098	01	-	1988
08.	L-4816572	19.07.2013	M/s. Svarn Infratel Pvt. Ltd., 74 Milestone, Village Mitrol, Delhi Mathura Road, Next to Gulab Public School, Before Hodal Toll Plaza, Distt. Palwal-121105, (Haryana)	PVC insulated (Heavey Duty) electric cables, Pt. 1 for working voltage upto and including 1100 V	1554	01	-	1988
09.	L-4814568	22.07.2013	M/s. Kunal Industries, Near Housing Board, Ballabgarh, Sector-2, Distt. Faridabad-121004, (Haryana)	Packaged drinking water (Other than Natural Mineral Water)	15543	-	-	2004
10.	L-4816370	30.07.2013	M/s. Kartik Containers Pvt. Ltd., Asauda More, Near Funtown, Asauda, Bahadurgarh-124505 Distt. Jhajjar, (Haryana)	Drums, large, fixed ends Part-1:Grade A Drums	1783	01	-	1993

[No. CMD/13:11]

BINDU KUMAR, Section Officer

नई दिल्ली, 13 सितम्बर, 2013

का॰आ॰ 2001.—अधिसूचना भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि जिन भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया हैं वे स्थापित हो गए हैं:—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या,वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 16097:2013 निजोवाणक एक बार उपयोग स्कल्प वन विंगदार सइ इनफवूजन सट		अगस्त 2013

इस मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलूरू, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एम एच डी/जी-3.5]
एस॰ किशोर कुमार, वैज्ञानिक 'एफ' एवं प्रमुख (एम एच डी)

New Delhi, the 13th September, 2013

S.O. 2001.—In pursuance of clause (b) of Sub rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particluars of which are given in the Schedule hereto annexed have been issued.

SCHEDULE

Sl. No.	No. & Year of the Indian Standards	No. and year of Indian Standards, if any, superseded by the new Indian Standard	Date established
(1)	(2)	(3)	(4)
1.	IS 16097:2013: Sterline single use scalpvein (Winged Needle) infusion set		August 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MHD/G-3.5]
S. KISHORE KUMAR, Scientist 'F' & Head (MHD)

नई दिल्ली, 13 सितम्बर, 2013

का॰आ॰ 2002.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आई एस 4484:2013 पोतनिर्माण-विद्युत वेल्डिड स्टड कड़ी वाली एंकर जंजीरें तथा संयोजी सांकलें और पिरकियां-विशिष्टि (तीसरा पुनरीक्षण)	–	अगस्त 2013
2	आई एस 16045:2013 कॉपर एलॉय स्क्रू-समुद्री प्रयोग हेतु डाउन स्टॉप वाल्व एवं स्टॉप एवं चैक वाल्व – विशिष्टि	–	अगस्त 2013
3	आई एस 16057: 2013 एल पी जी चालित आंतरिक दहन इंजिन – सुरक्षा एवं कार्यकारिता अपेक्षाएं – विशिष्टि	–	अगस्त 2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों, अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ टी ई डी/जी-16]

पी॰ सी॰ जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 13th September, 2013

S.O. 2002.—In pursuance of clause (b) of the sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl.No.	No., Year & title of the Indian Standards Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date Established
(1)	(2)	(3)	(4)
1	4484:2013 Shipbuilding - Electrically welded stud link anchor chains and connecting shackles and swivels - Specification (Third Revision)	-	August 2013
2	16045:2013 Copper alloy screw - Down stop valves and stop and check valves for marine application - Specification	-	August 2013
3	16057:2013 LPG operated internal combustion engines - Safety and performance requirements - Specification	-	August 2013

Copy of these Standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch

Offices: Ahmedabad, Bangalore-Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. TED/G-16]
P.C. JOSHI, Scientist 'F' & Head (Transport Engg.)

नई दिल्ली, 16 सितम्बर, 2013

का॰आ॰ 2003.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन मानकों का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गये हैं:

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आई एस 6003:2010 पूर्व प्रतिलंबित कंक्रीट में प्रयुक्त दाँतेदार तार – विशिष्टि (दूसरा पुनरीक्षण)	आई एस 6003:1983	20 सितम्बर 2013

इस भारतीय मानक की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफ़र मार्ग, नई दिल्ली 110002, क्षेत्रीय कार्यालयों, नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों, अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा कोचि में बिक्री हेतु उपलब्ध है।

[संदर्भ सीईडी/राजपत्र]
ज॰ रॉय चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 16th September, 2013

S.O. 2003.—In pursuance of clause (b) of the sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl.No.	No., & Year of the Indian Standards Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	IS 6003:2010 Indented wire for prestressed concrete - Specification (Second revision)	–	20 September 2013

Copy of this Standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore-Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. CED/Gazette]
J. ROY CHOWDHURY, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 16 सितम्बर, 2013

का॰आ॰ 2004.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस मानक का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गया है :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1)	आई एस 4326 : 2013 भवनों की भूकम्प प्रतिरोधी डिजाइन और संरचना-रीति संहिता (तीसरा पुनरीक्षण)	आई एस 4326 : 1993	31 अगस्त 2013

इस भारतीय मानक की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफ़र मार्ग, नई दिल्ली 110002, क्षेत्रीय कार्यालयों, नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों, अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा कोचि में बिक्री हेतु उपलब्ध है।

[संदर्भ सीईडी/राजपत्र]

ज॰ रॉय चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 16th September, 2013

S.O. 2004.—In pursuance of clause (b) of the sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed have been established on the date indicated it :

SCHEDULE

Sl.No.	No. & Year of the Indian Standards Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date Established
(1)	(2)	(3)	(4)
1	IS 4326 : 2013 Earthquake Resistant Design and Construction of Buildings - Code of Practice (Third Revision)	IS 4326: 1993	31 August 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore-Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. CED/Gazette]

J. ROY CHOWDHURY, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 16 सितम्बर, 2013

का॰आ॰ 2005.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गया हैं:

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
(1)	आई एस 1200 (भाग 5) : 2013 भवन निर्माण और सिविल इंजीनियरिंग कार्यों की मापन पद्धतियां: भाग 5 फॉर्मवर्क (चौथा पुनरीक्षण)	आई एस 1200 (भाग 5) : 1982	31 जुलाई, 2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफ़र मार्ग, नई दिल्ली 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा कोचि में बिक्री हेतु उपलब्ध हैं।

[संदर्भ सीईडी/राजपत्र]

ज॰ रॉय चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 16th September, 2013

S.O. 2005.—In pursuance of clause (b) of the sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule below has been established on the date indicated against each:

SCHEDULE

Sl.No.	No. and Year of the Indian Standards Established and title	No. and year of Indian Standards, if any, Superseded by the New Indian Standard	Date when Established
(1)	(2)	(3)	(4)
(1)	IS 1200 (Part 5):2013 Method of measurement of building and civil engineering works Part 5 Formwork (*Fourth Revision*)	IS 1200 (Part 5): 1982	31 July, 2013

Copy of the Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Kochi.

[Ref. CED/Gazette]

J. ROY CHOWDHURY, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 16 सितम्बर, 2013

का॰आ॰ 2006.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गये हैं:

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
(1)	आई एस 16074:2013 इस्पात के सपाट दरवाजे के शटर्स – विशिष्टि	–	31 अगस्त 2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफ़र मार्ग, नई दिल्ली 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा कोचि में बिक्री हेतु उपलब्ध हैं।

[संदर्भ सीईडी/राजपत्र]
ज॰ रॉय चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 16th September, 2013

S.O. 2006.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule below has been established on the date indicated against each:

Sl.No.	No. and Year of the Indian Standards Established and title	No. and year of Indian Standards, if any, Superseded by the New Indian Standard	Date when Established
(1)	(2)	(3)	(4)
(1)	IS 16074:2013 Steel flush door shutters - Specification	-	31 August, 2013

Copy of the Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Kochi.

[Ref. CED/Gazette]
J. ROY CHOWDHURY, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 17 सितम्बर, 2013

का॰आ॰ 2007.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गये हैं:

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 16123 (भाग 1) : 2013/ आईएसओ 13053-1:2011 प्रक्रिया सुधार में मात्रात्मक पद्धतियां- सिक्स सिग्मा भाग 1 डीएमएआईसी पद्धति	–	31 अगस्त, 2013
2.	आईएस 16123 (भाग 2) : 2013/ आईएसओ 13053-2:2011 प्रक्रिया सुधार में मात्रात्मक पद्धतियां - सिक्स सिग्मा भाग 2 औजार एवं तकनीकें	–	31 अगस्त, 2013

इस मानक की प्रतियां भारतीय मानक ब्यूरो, मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफ़र मार्ग, नई दिल्ली 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एम एस डी/जी-8 अधिसूचना]

के॰ एन॰ राव, वैज्ञानिक 'एफ' एवं प्रमुख (प्रबंध एवं तंत्र विभाग)

New Delhi, the 17th September, 2013

S.O. 2007.—In pursuance of clause (b) of the sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which is given in the schedule hereto annexed has been established on the date indicated against each:

SCHEDULE

Sl.No.	No. and Year of the Indian Standards Established	No. and year of Indian Standard, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 16123 (Part 1):2013/ ISO 13053-1:2011 Quantitative methods in process improvement - Six sigma- Part 1 The DMAIC Methodology	-	31 August, 2013
2.	IS 16123 (Part 2):2013/ ISO 13053-2:2011 Quantitative methods in process improvement - Six sigma- Part 2 Tools and Techniques	-	31 August, 2013

Copy of above Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices: at Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: at Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. MSD/G-8 Notification]
K. N. RAO, Scientist 'F' & Head (MSD)

नई दिल्ली, 18 सितम्बर, 2013

का॰आ॰ 2008.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है:

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
(1)	आई एस 1126 : 2013 प्राकृतिक निर्माण पत्थरों का टिकाउपन ज्ञात करना – परीक्षण पद्धति (दूसरा पुनरीक्षण)	आई एस 1126 : 1974	31 अगस्त, 2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग नई दिल्ली 110002, क्षेत्रीय कार्यालयों : कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा कोचि में बिक्री हेतु उपलब्ध हैं।

[संदर्भ सीईडी/राजपत्र]
ज॰ रॉय चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 18th September, 2013

S.O. 2008.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed have been established on the date indicated it:

SCHEDULE

Sl.No.	No. and Year of the Indian Standards Established	No. and year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
(1)	IS 1126 : 2013 Determination of Durability of Natural Building Stones - Method of Test (Second Revision)	IS 1126 : 1974	31 August, 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar March, New Dehi-110 002 and Regional Offices: Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbator, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref. CED/Gazette]
J. ROY CHOWDHURY, Scientist 'F' & Head (Civil Engg.)

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 22 मार्च, 2013

का॰आ॰ 2009.—केन्द्रीय सरकार, भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद् से परामर्श करने के बाद एतद्द्वारा उक्त अधिनियम की पहली अनुसूची में निम्नलिखित और संशोधन करती है नामत: :—

''गुरु गोबिंद सिंह इंद्रप्रस्थ विश्वविद्यालय, नई दिल्ली'' के सामने 'मान्यताप्राप्त चिकित्सा अर्हता' [इसके आगे कॉलम (2) के रूप में संदर्भित] के अंतर्गत शीर्षक 'पंजीकरण के लिए संप्रेक्षण' [इसके आगे कॉलम (3) के रूप में संदर्भित] के अन्तर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अन्त:स्थापित किया जाएगा, अर्थात्:–

2	3
''बैचलर ऑफ मेडीसिन और बैचलर ऑफ सर्जरी''	एम॰ बी॰ बी॰ एस॰ (यह प्रति वर्ष 100 एम॰ बी॰ बी॰ एस॰ छात्रों के वार्षिक प्रवेश सहित दिसंबर, 2012 अथवा उसके बाद आर्मी आयुर्विज्ञान कॉलेज, नई दिल्ली में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में गुरु गोविंद सिंह इन्द्रप्रस्थ विश्वविद्यालय, नई दिल्ली द्वारा एक मान्यताप्राप्त चिकित्सा अर्हता होगी।)

[सं॰ यू॰ 12012/61/2004-एमई (पी-II)]
अनीता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 22nd March, 2013

S.O. 2009.—In exercise of the powers conferred by sub-section (2) of section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act.

In the said First Schedule after "Guru Gobind Singh Indraprastha University, New Delhi" and under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Bachelor of Medicine and Bachelor of Surgery"	MBBS (This shall be a recognised medical qualification when granted by Guru Gobind Singh Indraprastha University, New Delhi in respect of students being trained at Army College of Medical Sciences, New Delhi with annual intake of 100 MBBS students on or after December, 2012.)

[No. U. 12012/61/2004-ME(P-II)]
ANITA TRIPATHI, Under Secy.

नई दिल्ली, 7 मई, 2013

का॰आ॰ 2010.—केन्द्रीय सरकार, भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद् से परामर्श करने के बाद एतद्द्वारा उक्त अधिनियम की पहली अनुसूची में निम्नलिखित और संशोधन करती है नामत: :—

उक्त प्रथम अनुसूची में ''मान्यताप्राप्त चिकित्सा अर्हता'' शीर्षक के तहत (कॉलम 2 में) और पंजीकरण के लिए संप्रेषण रूप के अंतर्गत (कॉलम 3 में) ''राजस्थान स्वास्थ्य विज्ञान विश्वविद्यालय, जयपुर'' निम्नलिखित को अंतर्विष्ट किया जाएगा, नामत: :—

2	3
''बैचलर ऑफ मेडीसिन और बैचलर ऑफ सर्जरी''	एम॰ बी॰ बी॰ एस॰ (यह प्रति वर्ष 150 एम॰ बी॰ बी॰ एस॰ छात्रों के वार्षिक प्रवेश सहित फरवरी, 2013 अथवा उसके बाद गीतांजलि मेडिकल कॉलेज एवं अस्पताल, उदयपुर, राजस्थान में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजस्थान स्वास्थ्य विज्ञान विश्वविद्यालय, जयपुर द्वारा एक मान्यताप्राप्त चिकित्सा अर्हता होगी।)

[सं॰ यू॰ 12012/496/2007-एमई (पी-II]
अनीता त्रिपाठी, अवर सचिव

New Delhi, the 7th May, 2013

S.O. 2010.—In exercise of the powers conferred by sub-section (2) of section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said First Schedule against "Rajasthan University of Health Sciences, Jaipur" under the heading 'Recognized Medical Qualification' [in column (2)] and under the heading 'Abbreviation for Registration" [in column (3)], the following shall be inserted, namely :—

(2)	(3)
"Bachelor of Medicine and Bachelor of Surgery"	MBBS (This shall be a recognised medical qualification when granted by Rajasthan University of Helath Sciences, Jaipur in respect of students being trained at Geetanjali Medical College & Hospital, Udaipur, Rajasthan on or after February, 2013 with annual intake of 150 students per year.)

[No. U. 12012/496/2007-ME (P-II)]
ANITA TRIPATHI, Under Secy.

नई दिल्ली, 30 जुलाई, 2013

का॰आ॰ 2011.—केन्द्रीय सरकार, भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 की 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद् से परामर्श करने के बाद एतद्द्वारा उक्त अधिनियम की पहली अनुसूची में निम्नलिखित और संशोधन करती है नामत: :—

उक्त प्रथम अनुसूची में ''मान्यताप्राप्त चिकित्सा अर्हता'' शीर्षक के तहत (कॉलम 2 में) और पंजीकरण के लिए संप्रेषण रूप के अंतर्गत (कॉलम 3 में) ''डॉ॰ भीमराव अंबेडकर विश्वविद्यालय, आगरा (उत्तर प्रदेश)'' निम्नलिखित को अंतर्विष्ट किया जाएगा, नामत: :—

2	3
''बैचलर ऑफ मेडीसिन और बैचलर ऑफ सर्जरी''	एम॰ बी॰ बी॰ एस॰ (यह प्रति वर्ष 100 एम॰ बी॰ बी॰ एस॰ छात्रों के वार्षिक प्रवेश सहित अप्रैल, 2013 अथवा उसके बाद रामा मेडिकल कॉलेज अस्पताल एवं अनुसंधान केन्द्र, कानपुर, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में डॉ॰ भीमराव अंबेडकर विश्वविद्यालय, आगरा (उत्तर प्रदेश) द्वारा एक मान्यताप्राप्त चिकित्सा अर्हता होगी।)

[सं॰ यू॰ 12012/336/2006-एमई (पी-II)]
अनीता त्रिपाठी, अवर सचिव

New Delhi, the 30th July, 2013

S.O. 2011—In exercise of the powers conferred by sub-section (2) of section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said First Schedule against "Dr. Bhim Rao Ambedker University, Agra (Uttar Pradesh)" under the heading 'Recognized Medical Qualification' [in column (2)] and under the heading "Abbreviation for Registration" [in column (3)], the following shall be inserted, namely:—

(2)	(3)
"Bachelor of Medicine and Bachelor of Surgery"	MBBS [This shall be a recognised medical qualification when granted by Dr. Bhim Rao Ambedker University, Agra (Uttar Pradesh) in respect of students being trained at Rama Medical College Hospital & Research Centre, Kanpur, Uttar Pradesh on or after April, 2013 with annual intake of 100 students per year on or after April, 2012].

[No. U. 12012/336/2006-ME (P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 19 अगस्त, 2013

का॰आ॰ 2012.—केन्द्रीय सरकार, भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद् से परामर्श करने के बाद एतद्द्वारा उक्त अधिनियम की पहली अनुसूची में निम्नलिखित और संशोधन करती है नामत: :—

उक्त अनुसूची में–

(क) ''मणिपाल उच्च शिक्षा अकादमी (मानित विश्वविद्यालय), कर्नाटक'' के सामने 'मान्यताप्राप्त चिकित्सा अर्हता' [इसके आगे कॉलम (2) के रूप में संदर्भित] के अंतर्गत शीर्षक 'पंजीकरण के लिए संप्रेषण' [इसके आगे कॉलम (3) के रूप में संदर्भित] के अन्तर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्त:स्थापित किया जाएगा, अर्थात्:–

2	3
''डॉक्टर ऑफ मेडीसिन (तांत्रिका विज्ञान)''	डी॰एम॰ (तांत्रिका विज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह कस्तूरबा मेडिकल कॉलेज, मणिपाल, कर्नाटक में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में, मणिपाल उच्च शिक्षा अकादमी (मानित विश्वविद्यालय), कर्नाटक द्वारा वर्ष 1995 में अथवा उसके पश्चात् प्रदान की गई हो।)
''मास्टर ऑफ चिरुरगई (न्यूरो सर्जरी)''	एम॰ सी एच॰ (न्यूरो सर्जरी) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी जब यह कस्तूरबा मेडिकल कॉलेज, मणिपाल, कर्नाटक में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में, मणिपाल उच्च शिक्षा अकादमी (मानित विश्वविद्यालय), कर्नाटक द्वारा वर्ष 1995 में अथवा उसके पश्चात् प्रदान की गई हो।)

सभी के लिए टिप्पणी:

1. स्नातकोत्तर पाठ्यक्रम के लिए स्वीकृति 5 वर्ष की अधिकतम अवधि के लिए होगी, जिसके बाद इसकी पुनरीक्षा की जाएगी।

2. उप-धारा 4 में अपेक्षित अनुसार मान्यता को समय पर नवीकरण नहीं कराने के फलस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रमों में निरपवाद रूप से दाखिला बन्द हो जाएगा।

[सं॰ यू॰ 12012/21/2013-एमई (पी-II)]
अनीता त्रिपाठी, अवर सचिव

(2)	(3)
"Doctor of Medicine (Neurology)"	D.M. (Neurology) (This shall be a recognised medical qualification when granted by Manipal Academy of Higher Education (Deemed University), Karnataka in respect of students being trained at Kasturba Medical College, Manipal, Karnataka on or after 1995.)
"Master of Chirurgiae (Neuro Surgery)"	M.Ch. (Neuro Surgery) (This shall be a recognised medical qualification when granted by Manipal Academy of Higher Education (Deemed University), Karnataka in respect of students being trained at Kasturba Medical College, Manipal Karnataka on or after 1995.)

Note to all:

1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. Failure to seek timely renewal of recognition as required in sub-clause-4 shall invariably result in stoppage of admission to the concerned Postgraduate Course.

[No. U.12012/21/2013-ME (P-II)
ANITA TRIPATHI, Under Secy.

New Delhi, the 19th August, 2013

S.O. 2012.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule—

(a) against "Manipur Academy of Higher Education (Deemed University), Karnataka" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

वस्त्र मंत्रालय

नई दिल्ली, 13 सितम्बर, 2013

का॰आ॰ 2013.—केन्द्रीय सरकार, संघ के शासकीय प्रयोजनों के लिए राजभाषा नियम, 1976 के नियम 10 के उपनियम 4 के अनुसरण में वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालय को जिसमें 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

1. अनुसंधान प्रसार केन्द्र व समूह विकास केन्द्र, केरेअवप्रसं, केन्द्रीय रेशम बोर्ड, वार्ड नं॰ 6, मकान नं, 252, नौशेरा-185151, जिला-राजौरी (ज. व क.)।

2. अनुसंधान प्रसार केन्द्र, केरेअवप्रसं, केन्द्रीय रेशम बोर्ड, घुमारवीं-174021, हिमाचल प्रदेश।

3. अनुसंधान प्रसार केन्द्र, केरेअवप्रसं, केन्द्र रेशम बोर्ड, नादौन-177033, हिमाचल प्रदेश।

4. समूह विकास केन्द्र, केरेअवप्रसं, केन्द्रीय रेशम बोर्ड, कालसी-विकास नगर, अम्बाडी रेशम फार्म, देहरादून (उत्तराखण्ड)।

[सं॰ ई-11016/1/2011-हिंदी]
सुनयना तोमर, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the13th September, 2013

S.O. 2013.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (use for the official purpose of the Union) Rules, 1976, the Central Government, hereby notifies the following offices of the Ministry of Textiles, more than 80% staff whereof have acquired working knowledge of Hindi:

1. Research Extension Centre-cum-Cluster Development Centre, CSR&TI, Central Silk Board, Ward No. 6, House No. 252, Nowshera-185151 Dist. Rajouri (J&K).
2. Research Extension Centre, CSR&TI, Central Silk Board, Ghumarwin-174021, Himachal Pradesh.
3. Research Extension Centre, CSR&TI, Central Silk Board, Nadoun-177033, Himachal Pradesh.
4. Cluster Development Centre, CSR&TI, Central Silk Board, Kalasi, Vikas Nagar, Ambari Resham Farm, Dehradun (Uttarakhand).

[No. E-11016/1/2011-Hindi]
SUNAINA TOMAR, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 20 सितम्बर, 2013

का॰आ॰ 2014.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में वर्णित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है;

उक्त अनुसूची में वर्णित भूमि के अंतर्गत आने वाले क्षेत्र के ब्यौरे रेखांक संख्यांक एसईसीएल/बीएसपी/सीजीएम(पीएलजी)/भूमि/13/441, तारीख 10 अप्रैल, 2013 का निरीक्षण कलक्टर, उमरिया (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि से कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है;

उपरोक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साऊथ ईस्टर्न कोलफीलडस लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) से–

(i) उक्त अधिसूचना की धारा 4 की उप-धारा (3) के अधीन की गई किसी कार्रवाई से हुई या संभवतः होने वाली किसी क्षति के लिए अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा; या

(ii) उक्त अधिनियम की धारा 13 की उप-धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिए प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उप-धारा (1) के खंड (i) से (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिए पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा।

अनुसूची

मालाचुआ ब्लाक, सोहागपुर क्षेत्र,
जिला-शहडोल, मध्य प्रदेश

[रेखांक संख्यांक एसईसीएल/बीएसपी/सीजीएम (पीएलजी)/भूमि/13/441, तारीख 10 अप्रैल, 2013]

(क) राजस्व भूमि:

क्र॰ सं॰	ग्राम का नाम	जनरल संख्या	पटवारी हल्का नम्बर	तहसील	जिला	क्षेत्र हेक्टर में	क्षेत्र एकड़ में	टिप्पणी
1.	औढेरा	39	40	पाली	उमरिया	305.262	754.30	भाग
2.	मालाचुआ	852	41	पाली	उमरिया	467.980	1156.38	भाग
3.	ब्लाक पडरी	752	42	पाली	उमरिया	106.690	263.63	भाग

कुल: 879.932 हेक्टर (लगभग) या 2174.31 एकड़ (लगभग)

(ख) वन भूमि:

क्रम सं॰	कम्पार्टमेंट संख्या	रेन्ज	संभाग	वन का प्रकार	ब्लाक	क्षेत्र हेक्टर में	क्षेत्र एकड़ में	टिप्पणी
1.	223, 225, 229, 230, 232	घुनघुटी	उमरिया	आरक्षित वन	सोहागपुर	186.070	459.78	भाग

कुल: 186.070 हेक्टर (लगभग) या 459.78 एकड़ (लगभग)

कुल योग (क+ख): 879.932+186.070 = 1066.002 हेक्टर (लगभग) या
2174.31+459.78 = 2634.09 एकड़ (लगभग)

सीमा वर्णन:

क-ख रेखा ग्राम औढेरा के पश्चिमी सीमा में बिन्दु 'क' से आरंभ होती है और ग्राम औढेरा और मालाचुआ के उत्तरी भाग, आरक्षित वन कम्पार्टमेंट संख्या 223 तथा ग्राम ब्लाक पडरी के पश्चिमी भाग से गुजरती हुई बिन्दु 'ख' पर मिलती है।

ख-ग रेखा आरक्षित वन कम्पार्टमेंट संख्या 223, 225, ग्राम ब्लाक पडरी के पश्चिमी भाग, आरक्षित वन कम्पार्टमेंट संख्या 229 के पूर्वी भाग से गुजरती हुई बिंदु 'ग' पर मिलती है।

ग-घ रेखा आरक्षित वन कम्पार्टमेंट संख्या 229 के दक्षिणी भाग, आरक्षित वन कम्पार्टमेंट संख्या 230 के मध्य भाग से गुजरती है और बिंदु 'घ' पर मिलती है।

घ-क रेखा आरक्षित वन कम्पार्टमेंट संख्या 230, ग्राम औढेरा के पश्चिमी भाग और आरक्षित वन कम्पार्टमेंट संख्या 232 के दक्षिणी भाग से गुजरती हुई आरंभिक बिंदु 'क' पर मिलती है।

[फा॰ सं॰ 43015/05/2013-पीआरआईडब्ल्यू-I]
वी॰ एस॰ राणा, अवर सचिव

MINISTRY OF COAL

New Delhi, the 20th September, 2013

S.O. 2014.—Whereas it appears to the Central Government that coal is likely to be obtained from the land in the locality described in the Schedule annexed hereto;

And whereas, the plan bearing number SECL/BSP/CGM (PLG)/Land/13/441, dated the 10th April, 2013 containing details of the area of land described in the said Schedule may be inspected at the office of the Collector, District-Umaria (Madhya Pradesh) or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in land described in the aforesaid Schedule.

Any person interested in the land described in the above mentioned Schedule may—

(i) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the said Act; or

(ii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting licence ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the Officer-In-Charge or Head of the Department (Revenue), South Eastern Coalfields Limited, Seepat Road, Bilaspur-495006 (Chhattisgarh) within a period of ninety days from the date of publication of this notification.

SCHEDULE

Malachua Block, Johilla Area,
District-Umaria, Madhya Pradesh

[Plan bearing number SECL/BSP/CGM(PLG)/Land/13/441, dated the 10th April, 2013]

(A) Revenue land:

Sl. No.	Name of village	General number	Patwari halka number	Tahsil	District	Area in hectares	Area in acres	Remark
1.	Awdhera	39	40	Pali	Umaria	305.262	754.30	Part
2.	Malachua	852	41	Pali	Umaria	467.980	1156.38	Part
3.	Block Padari	752	42	Pali	Umaria	106.690	263.63	Part

Total: 879.932 hectares (approximately) or 2174.31 acres (approximately)

(B) Forest land:

Sl. No.	Compartment number	Range	Division	Type of Forest	Block	Area in hectares	Area in acres	Remark
1.	223, 225,229, 230, 232	Ghunghuti	Umaria	Reserve Forest	Sohagpur	186.070	459.78	Part

Total: 186.070 hectares (approximately) or 459.78 acres (approximately)

Grand Total (A+B): 879.932+186.070=1066.002 hectares (approximately) or 2174.31+459.78=2634.09 acres (approximately)

Boundary Description:

A-B Line starts from point 'A' on the western boundary of villages Awdhera and passes through northern part of village Awdhera, Malachua, western part of Reserve Forest Compartment no. 223, village Block Padari and meets at point 'B'.

B-C Line passes through western part of Reserve Forest Compartment no. 223, 225, village Block Padari, eastern part of Reserve Forest Compartment no. 229 and meets at point 'C'.

C-D Line passes through southern part of Reserve Forest Compartment no. 229, middle part of Reserve Forest Compartment no. 230 and meets at point 'D'.

D-A Line passes through Reserve Forest Compartment no. 230, western part of village Awdhera, southern part of Reserve Forest Compartment no. 232 and meets at starting point 'A'.

[F.No. 43015/05/2013-PRIW-I]
V. S. RANA, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 9 सितम्बर, 2013

का॰आ॰ 2015.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का॰आ॰ 2063 तारीख 19/06/2002 में जो भारत के राजपत्र के भाग II, खण्ड 3, उप-खण्ड (ii) में प्रकाशित की गई थी, में निम्नलिखित संशोधन करती है, अर्थात्:–

उक्त अधिसूचना की अनुसूची की ''तहसील भीनमाल''

(क) स्तम्भ 1 में गांव ''भीनमाल''

(i) स्तम्भ 2 के सर्वेक्षण संख्या ''5307'', के सामने स्तम्भ 4 में क्षेत्रफल ''0-0783'' के स्थान पर क्षेत्रफल ''**शून्य**'' रखा जायेगा।

(ii) स्तम्भ 2 के सर्वेक्षण संख्या ''5308'', के सामने स्तम्भ 4 में क्षेत्रफल ''0-3111'' के स्थान पर क्षेत्रफल ''**शून्य**'' रखा जायेगा।

[फा॰ सं॰ आर-31015/39/2001-ओआर-II]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 9th September, 2013

S.O. 2015.—In exercise of the powers conferred by sub-section (1) of section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas, S.O. 2063, dated 19/6/2002 published in Part II, Section 3, Sub-section (ii), of the Gazatte of India, namely:—

In Schedule to the said notification of **Tehsil Bhinmal**:—

(A) against village **"Bhinmal"** in column 1,

(i) In survey No. **"5307",** in column 2, for the areas "0-0783", in column 4, the area **"NIL"** shall be substituted.

(ii) In survey No. **"5308",** in column 2, for the areas **"0-3111"** in column 4, the area **"NIL"** shall be substituted.

[F. No. R-31015/39/2001-OR-II]
PAWAN KUMAR, Under Secy.

नई दिल्ली, 9 सितम्बर, 2013

का॰आ॰ 2016.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का॰आ॰ 2695 तारीख 21/08/2002 में जो भारत के राजपत्र के भाग II, खण्ड 3, उपखण्ड (ii) में प्रकाशित की गई थी, में निम्नलिखित संशोधन करती है, अर्थात्:–

उक्त अधिसूचना की अनुसूची की **''तहसील खींवसर''**

(क) स्तम्भ 1 में गांव **''कांटियां''**

(i) स्तम्भ 2 के सर्वेक्षण संख्या ''1113'', के सामने स्तम्भ 4 में क्षेत्रफल ''2-11'' के स्थान पर क्षेत्रफल ''0-12'' रखा जायेगा।

(ख) स्तम्भ 1 में गांव **''दुजासर''**

(i) स्तम्भ 2 के सर्वेक्षण संख्या **''978''**, के सामने स्तम्भ 4 में क्षेत्रफल **''2-02''** के स्थान पर क्षेत्रफल **''1-02''** रखा जायेगा।

(ग) स्तम्भ 1 में गांव **''चावण्डिया''**

(i) स्तम्भ 2 के सर्वेक्षण संख्या **''278''**, के सामने स्तम्भ 4 में क्षेत्रफल **''0-03''** के स्थान पर क्षेत्रफल **''शून्य''** रखा जायेगा।

(ii) स्तम्भ 2 के सर्वेक्षण **संख्या ''279''**, के सामने स्तम्भ 4 में क्षेत्रफल **''0-03''** के स्थान पर क्षेत्रफल **''शून्य''** रखा जायेगा।

(घ) स्तम्भ 1 में गांव **''शिवपुरा''**

(i) स्तम्भ 2 के सर्वेक्षण संख्या **''1052''**, के सामने स्तम्भ 4 में क्षेत्रफल **''1-11''** के स्थान पर क्षेत्रफल **''0-16''** एवं स्तम्भ 2 में सर्वेक्षण संख्या **''1052/1612''**, स्तम्भ 4 में क्षेत्रफल **''0-15''** रखा जायेगा।

(ii) स्तम्भ 2 के सर्वेक्षण संख्या **''1060''** के सामने स्तम्भ 4 में क्षेत्रफल **''3-01''** के स्थान पर क्षेत्रफल **''1-11''** एवं स्तम्भ 2 में सर्वेक्षण संख्या **''1060/1613''**, स्तम्भ 4 में क्षेत्रफल **''1-10''** रखा जायेगा।

(ङ) स्तम्भ 1 में गांव **''माडपुरा''**

(i) स्तम्भ 2 के सर्वेक्षण संख्या **''1140''**, के स्थान पर **''1140/1508''** रखा जायेगा।

(ii) स्तम्भ 2 के सर्वेक्षण संख्या **''1331''**, के स्थान पर **''1331/1090''** रखा जायेगा।

[फा॰ सं॰ आर-31015/46/2002-ओआर-II]
पवन कुमार, अवर सचिव

New Delhi, the 9th September, 2013

S.O. 2016.—In exercise of the powers conferred by sub-section (1) of section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. 2695, dated 21/08/2002 published in Part II, Section 3, Sub-section (ii), of the Gazatte of India, namely:—

In Schedule to the said notification of **"Tehsil Khinwsar":—**

(A) against village **"Kantiya"**, in column 1,

(i) In survey No. **"1113",** in column 2 for the areas **"2-11",** in column 4 the area **"0-12"** shall be substituted.

(B) against village **"Dujasar",** in column 1,

(i) In survey No. **"978",** in column 2, for the areas **"2-02",** in column 4, the area **"1-02"** shall be substituted.

(C) against village **"Chanwandiya",** in column 1,

(i) In survey No. **"278",** in column 2, for the areas **"0-03",** in column 4, the area **"NIL"** shall be substituted.

(ii) In survey No. **"279",** in column 2, for the areas **"0-03",** in column 4, the area **"NIL"** shall be substited.

(D) against village **"Shivpura",** in column 1,

(i) In survey No. **"1052"** , in column 2 for the areas **"1-11",** in column 4, the area **"0-16"** and in column 2, survey No. **"1052/1612",** in column 4, the area **"0-15"** shall be substituted.

(ii) In survey No. **"1060"** , in column 2 for the areas **"3-01",** in column 4, the area **"1-11"** and in column 2, survey No. **"1060/1613",** in column 4, the area **"1-10"** shall be substituted.

(E) Against village **"Madpura"**, in column 1,

(i) In survey No. **"1140"** , in column 2, survey No. **"1140/1508"** shall be substituted.

(ii) In survey No. **"1331"** , in column 2, survey No. **"1331/1090"** shall be substituted.

[F. No. R-31015/46/2002-OR-II]
PAWAN KUMAR, Under Secy.

नई दिल्ली, 9 सितम्बर, 2013

का॰आ॰ **2017.**—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाईपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुऐ, पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का॰आ॰ 477 तारीख 07/02/2003 में जो भारत के राजपत्र के भाग 2 खण्ड 3 उपखण्ड (ii) में प्रकाशित की गई थी, में निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त अधिसूचना की अनुसूची की ''**तहसील लूनी**''

(क) स्तम्भ 1 में गांव ''**सिनली**''

(i) स्तम्भ 2 के सर्वेक्षण संख्या ''**203**'', ''**203/1**'', **203/3**'', के सामने स्तम्भ 4 में कुल क्षेत्रफल ''**6-02**'', के स्थान पर स्तम्भ 2 व स्तम्भ 4 में सर्वेक्षण संख्या ''**203**'' क्षेत्रफल ''**0-15**'', सर्वेक्षण संख्या ''**203/2**'' क्षेत्रफल ''**1-10**'', सर्वेक्षण संख्या ''**203/1**'', क्षेत्रफल ''**1-07**'', सर्वेक्षण संख्या ''**203/3**'' क्षेत्रफल ''**2-10**'' रखा जायेगा।

[फा॰ सं॰ आर-31015/33/2001-ओआर-II]

पवन कुमार, अवर सचिव

New Delhi, the 9th September, 2013

S.O. 2017.—In exercise of the powers conferred by sub section (1) of section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. 477, dated 07.02.2003 published in Part II, Section 3, sub-section (ii), of the Gazatte of India, namely:—

In Schedule to the said notification of **Tehsil Luni:—**

(A) against village **"Sinli"** in column 1,

(i) In survey No. **"203", "203/1", "203/3",** in column 2, for the total areas **"6-02",** in column 2 and 4, survey No. **"203"** area **"0-15",** survey No. **"203/2"** area **"1-10",** survey No. **"203/1"** area **"1-07",** survey No. **"203/3",** area **"2-10"** shall be substituted.

[F. No. R-31015/33/2001-OR-II]
PAWAN KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 29 अगस्त, 2013

का॰आ॰ **2018.**— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 02/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/08/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/67/2007-आईआर (बी-II)]
सुमति सकलानी, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 29th August, 2013

S.O. 2018.— In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/02/2008) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Bank of Maharashtra and their workman, which was received by the Central Government on 05.08.2013.

[No. L-12012/67/2007-IR(B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/02/2008 Date 25.07.2013

Party No. 1 The Chief Manager,
Bank of Maharashtra,
Regional Office,
Mahabank Building,
Dr. Munje Marg,

Sitabuldi, Nagpur-440012.

Party No. 2 The General Secretary,
Union of the Manarashtra Bank
Employees, 542, Dr. Munje Marg,
Congress Nagar,
Nagpur-440012

AWARD

(Dated: 25th July, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra and their workman, Shri V.P. Dhanodkar, for adjudication, as per letter No. L-12012/67/2007-IR(B-II) dated 18.01.2008, with the following schedule:—

> "Whether the action of the management of Bank of Maharashtra, Nagpur in imposing the punishment of "Censure" and to make good the amount of loss of Rs. 33,000/- to the Bank immediately *vide* Appellate Authority Order Ref. AX7/NR/PERS/VPD/Appeal/2006 dated 16/11/2006 on Shri V.P. Dhanodkar is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Union of the Maharashtra Bank Employees", ("the Union" in short), filed the statement of claim on behalf of the workman, Shri V.P. Dhanodkar, ("The workman" in short) and the management of Bank of Maharashtra, ("Party No. 1" in short) filed its written statement.

The case of the workman as presented by the union in the statement of claim is that the Party No. 1 is a Nationalised Bank and is an industry within the meaning as provided under the Act and the service conditions of the Bank Employees including the Party No. 1 are governed by the provision of the Sastry award, Desai Award and different settlements signed between the union and the management, which are called as "Bipartite settlements" and the workman was working at Nandanwan Branch and was assigned the post of special assistant on temporary basis, in absence of the permanent special assistant and while working at Nandanwan Branch, the charge sheet dated 12.01.2005 came to be issued against the workman containing two charges, both independently covered under clause 19.5(j) of the Bipartite settlement and a regular departmental enquiry was ordered and one Shri A.D.Lapalikar was appointed as the enquiry officer to enquire into the charges and the enquiry officer after conducting the departmental enquiry submitted his report dated 25.10.2005, holding the charges to have been proved against the workman and such declaration was without application of judicious mind and on the basis of the findings of the enquiry officer, the disciplinary authority *vide* order dated 23.02.2006 awarded punishment of bringing down the pay scale of the workman by one state for charge No. 1 and punishment of warning for charge No. 2 and under the grab of administrative order dated 25.02.2006, Shri Burange, who was offciating as the Chief Manager directed the recovery of Rs. 33,500/- from the salary of the workman with immediate effect and as a consequence of the aforesaid orders, an amount of Rs. 2000/- per month came to be deducted from the salary payabale to the workman and before passing of the order dated 25.02.2006, no opportunity of hearing was granted to the workman in total denial of the principles of natural justice and the action of recovery was resisted by the workman *vide* his representation dated 06.03.2006 and the workman filed an appeal dated 10.04.2006, before the appellate authority and the appellate authority after hearing the workman modified the order dated 23.02.2006 *vide* his order dated 16.11.2006 and confirmed the punishment of censure for charge No. 1 and so also for charge No. 2 and the appellate authority also upheld the order of the disciplinary authority in directing the workman to make good the loss of the amount of Rs. 33,500/- and the said order is unjustified and illegal. The further case of the workman is that the charges framed in the charge-sheet were basically wrong and recklessly framed and there was no evidence on record to prove and substantiate the charges and the findings of the enquiry officer were totally perverse and not based on any logical reasoning and the departmental enquiry was unfair and not proper and the action of recovery of an amount of Rs.33,500/- was also illegal and improper and the reasoning given were cryptic in nature and the report of the enquiry officer was casual and mechanical and the reasons assigned by the enquiry officer were not based on the evidence on record and documents which were specifically demanded were not supplied during the course of the enquiry and as the charges were not proved, the action taken by the first party is not justified and the person, who awarded the punishment was having no authority to pass the punishment. The union has prayed to answer the reference in their favour and to set aside the order dated 16.11.2006 and for a direction to Party No.1 to refund the amount of Rs.33,500/- recovered from the salary of the workman.

3. The Party No.1 in its written statement has pleaded *inter-alia* that a charge sheet dated 12.01.2005 was issued against the workman for the acts of misconduct committed by him, while he was officiating as a special assistant in Nandanwan Branch and on 27.04.2004 the workman received an application for issuance of a cheque book in the savings bank account No. 25414 of Shri S.M. Deshbratar and on the same day, he issued a cheque book bearing cheques from 857951 to 857960 in the savings bank

account No.25414, without verifying the signature of the applicant and tallying the same with the specimen signature available with the bank and photographs from the specimen signature book and thereby, he committed an act prejudicial to the interest of the bank and a gross misconduct under clause 19.5(j) of Bipartite settlement and on 28.04.2004, the workman verified the signature on cheque No. 857951 in the above stated account, before the same was sent for passing for payment and subsequently, it was transpired that the signature verified by the workman did not tally with the specimen signature available in the branch records and photographs from the specimen signature book and due to the latches of the workman, an amount of Rs. 67,000/- was fraudulently withdrawn from the savings bank account No. 25414 of Shri S.M. Deshbratar on 28.04.2004, through self cheque bearingNo. 857951 and the act of negligence committed by the workman amounted to gross misconduct under clause 19.5(j) of Bipartite settlement, 1966 and as such, the departmental enquiry was conducted against the workman and the enquiry was commenced on 02.02.2005 and concluded on 17.08.2005 and taking into consideration the evidence on record, the enquiry officer submitted his report on 25.10.2005, holding the charges levelled against the workman to have been proved and thereafter, a second show cause notice was issued to the workman *vide* letter dated 17.01.2006, informing him about the proposed punishment and he was accorded personal hearing on 24.01.2006 to submit his say on the proposed punishment and the workman appeared before the disciplinary authority and made his submissions and considering the materials on record of the departmental enquiry and the gravity of the misconduct, the disciplinary authority passed the order dated 23.02.2006, imposing the punishment of bringing down the scale of pay by one stage without cumulative effect for charge No.1 and punishment of censure for charge No.2 and the appeal preferred by the workman was duly considered by the appellate authority and the appellate authority modified the punishment imposed in respect of charge No.1 and imposed the punishment of censure for charge No 1 and confirmed the punishment of censure for charge No.2 and the appellate authority upheld the order of recovery of Rs.33,500/- from the workman and the charges were framed correctly against the workman and there was sufficient evidence on record to prove the charge and the enquiry was fair and proper and the findings of the enquiry officer are not perverse and the order for recovery of Rs.33,500/- was also legal and proper and the workman is not entitled for any relief.

4. The workman filed the documents of the departmental enquiry including the findings given by the enquiry officer, final order of punishment, order of the appellate authority and day to day proceedings of the departmental enquiry and all the documents were admitted in to evidence on behalf of the workman on admission by the Party No. l.

5. As this is a case of imposition of the punishment against the workman after holding of a departmental enquiry against him, the legality of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 11.07.2012, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the learned advocate for the workman that the enquiry officer without application of judicious mind and without any evidence declared both the charges as mentioned in the charge-sheet as proved and on the basis of such findings, the officiating Chief Manager purported himself to be the Disciplinary Authority awarded the punishment of bringing down pay of scale by one stage for charge No.1 and warning for charge No. 2 against the workman, by order dated 23.02.2006 and under the grab of administrative order dated 25.02.2006, directed recovery of Rs. 33,500/- from the salary payable to the workman with immediate effect, as a consequent of the aforesaid order, an amount of Rs. 2008/- per month came to be deducted from the salary payable to the workman and before passing of the order dated 25.02.2006, no opportunity of hearing was granted to the workman in total denial of principles of natural justice and on appeal by the workman against the punishments, the Appellate Authority by order dated 16.11.2006, modified the punishment of bringing down pay of scale by one stage for charge No.1 to one of censure, but confirmed the order of recovery of Rs. 33,500/- and the punishment is not just, fair and legal and the person, who awarded the punishment was having no authority to pass the final order of punishment and the order of recovery of the amount of Rs. 33,500/- was without any show cause notice or personal hearing of the workman and as such, the same is against the principles of natural justice and as such, the said order is liable to be set aside and the party No.1 be directed to refund the amount of Rs. 33,500/- to the workman.

7. Per contra, it was submitted by the learned advocate for the Party No.1 that by order dated 11.07.2012, the departmental enquiry conducted against the workman has been held to be legal, proper and in accordance with the principles of natural justice and the findings of the enquiry officer are based on the evidence on record of the enquiry and not on any extraneous materials and due to the failure on the part of the workman, an amount of Rs. 67,000/- was withdrawn fraudulently from the Saving Bank account of one Shri S.M. Deshbratar on 28.04.2004 and commission of gross misconduct has been proved against the workman in a properly conducted departmental enquiry and therefore, there is no scope to interfere with the punishment and the order for recovery of the amount of Rs. 33,500/- was effected correctly from him and the workman is not entitled to any relief.

8. On perusal of the materials on record including the enquiry report of the enquiry officer, it is found that the findings of the enquiry officer are based on the materials available on record. The enquiry officer has reached the findings after assessing the evidence on record of the enquiry in a rational manner. The findings of the enquiry officer are not based on any extraneous materials. It is also found that this is not a case of no evidence. So, the findings of the enquiry officer cannot be said to be perverse. The workman has been found guilty of the charges levelled against him in a properly conducted departmental enquiry. The punishment of censure imposed against the workman also cannot be said to be disproportionate to the charges proved against him. Hence, there is no question of interfering with the punishment of censure imposed against the workman for both the charges proved against him.

9. Now, the only question remains for consideration is in regard to the order passed by the Chief Manager (officiating) on 25.02.2006 directing recovery of Rs. 33,500/- from the salary of the workman with immediate effect.

On perusal of the document, Ext. W-IV, the order passed by the Chief Manager (O), Nagpur region, Nagpur on 25.02.2006, it is found that the same is an administrative order to make good of 50% of the loss of Rs. 67,000/- *i.e.* Rs. 33,500/- caused to the Bank. The said order was passed after the workman was found guilty of the charges levelled against him under clause 19.5 (J) of Bipartite Settlement, 1966 in the departmental enquiry. The above said order is an administrative order passed by the Chief Manager (O) and not as the Disciplinary Authority and the same is not an order of punishment in the departmental enquiry. Hence, there is no scope to interfere with the said order. Hence, it is ordered:—

ORDER

The action of the management of Bank of Maharashtra, Nagpur in imposing the punishment of "Censure" and to make good the amount of loss of Rs. 33,000/- to the Bank immediately on Shri V.P. Dhanodkar is legal & justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 29 अगस्त, 2013

का॰आ॰ 2019.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई॰डी॰बी॰आई॰ के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 07/2010-11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/08/2013 को प्राप्त हुआ था।

[सं॰ एल-12011/09/2009-आईआर (बी-II)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th August, 2013

S.O. 2019.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. CGIT/NGP/07/2010-11 of the Central Government Industrial Tribunal/Labour Court, Nagpur as shown in the Annexure, in the Indistrial dispute between the employers in relation to the management of IDBI BANK and their workmen, received by the Central Government on 01/08/2013.

[No. L-12011/09/2009-IR (B-II)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/07/2010-11 Date: 30.04.2013.

Party No.1 The Dy. General Manager,
Industrial Development Bank of India
At. WTC Complex, Cuffe Parade,
Mumbai-400005.

Versus

Party No.2 The General Secretary,
The I.D.B.I. Karmachari Sangh,
143/146, Bhavani Peth,
Satara- 415002.

AWARD

(Dated: 30th April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of IDBI Bank and their workman, Shri S.G. Bobde, for adjudication, as per letter No.L-12011/09/2009-IR (B-II) dated 01.09.2010, with the following schedule:—

> "Whether the action of the management of IDBI Bank Ltd., Mumbai in issuing office order no. 1779 dated 07.02.2008 transferring the services of Shri S.G. Bobde, workmen from Nagpur Branch to Raipur Branch in Chhattisgarh is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, The I.D.B.I. Karmachari Sangh, ("the union" in short) filed the statement of claim on behalf of the workman, Shri S.G.Bobde, ("the workman" in short) and the management of I.D.B.I. Bank, ("Party No. 1" in short) filed their written statement.

The case of the workman as projected by the union in the statement of claim is that it (union) is a registered

trade union and Party No.1 is a public sector bank and is an "Industry" within the meaning of section 2 (j) of the Act and as per notification dated 10th September, 2006 of the Government of India, the United Western Bank Ltd, ("the UWBL" in short) was amalgamated with the Industrial Development Bank of India Ltd. ("the I.D.B.I." in short) with entire business, properties, assets and liabilities and according to clause 8 of the above mentioned notification, all the employees of the UWBL were deemed to have been appointed in the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 02.09.2006. It is further pleaded by the union that it was previously operating as a registered trade union in the name and style of "United Western Bank Karmachari Sangh" and was the majority union of the employees of erstwhile UWBL and after the amalgamation, it was necessary to change the name and as such, it got its name changed as "IDBI Karmachari Sangh", ("the union" in short), with due approval of the authorities under the Trade union Act and the Party No.1 was requested to give it the status of recognized majority union and furnished the list of its office bearers vide communication dated 25.11.2006 and the list of the protected workmen to be declared as protected workmen under Rule 61 of the Industrial Disputes (Central) Rules, 1957 ("the Rules" in short) was forwarded to the Party No.1 every year and as Party No.1 did not make any correspondence with it, the grievance was raised before the competent authority under the Act and the said authority directed the Party No.1 to declare the protected workmen *vide* order dated 09.02.2010.

The further case of the union is that the genesis of the present dispute was order No. 1779 dated 07.02.2008, by which, the workman, who was its prime office bearer was transferred from Laxminagar branch, Nagpur to Raipur Branch, in the state of Chhattisgarh and the workman was working in the clerical grade in the erstwhile UWBL since 03.10.1977 and there was posts of special assistant having special allowance in the UWBL and the modalities and formalities for selection and filling up the posts of special assistant were settled by way of Settlement dated 26.07.1997 between the management of the UWBL and the then Western Bank Karmachari Sangh and in pursuance to the said settlement, the workman was selected and offered the post of Special Assistant and was posted to Laxminagar, Nagpur branch and he was working at the said branch as a Special Assistant with higher allowance and on 07.02.2008, the day on which, the workman was transferred by Party No.1 to Raipur Branch, there was no existing post of Special Assistant in Raipur branch and as such, the order No. 1779 dated 07.02.2008 was arbitrary and illegal and posts of special assistant are different posts than a clerical post and it was well decided in the settlement dated 26.07.1997 as to how, when and where the existing special assistants can be transferred by the bank and clauses 12 of the said settlement deals with the shifting of the post of special assistant, when the same is found not useful or becomes redundant at a particular branch to other branch/office in the same city where the services of a special assistant can be utilized, whereas, clause 15 deals with administrative transfers and according to clause 15 of the said settlement, "without prejudice to the provisions, in respect of the transfers of award staff, as provided in Bipartite settlement dated 19.10.1966 as amended up-to-date, a special Assistant can be transferred within city, on administrative grounds, after a period of three years from the date the duties of special assistant are assigned to him and the transfer within Municipal/Corporation/Agglomeration area will be treated as a transfer within city having the same CCA/HRA." and applying the aforesaid provisions, it is clear that Party No.1 committed breach of the settlement and willfully violated the same, by transferring the workman out of the state of Maharashtra *i.e.* Chhattisgarh State and the order is therefore, illegal and arbitrary.

The further plea of the union is that the provisions of Sastry award were applicable to the employees of erstwhile UWBL, by virtue of the settlement signed by the parties and clause 535 of Sastry Award provides the issue of transfer of award staff employees and the approach of the management towards transfers of office bearers of the Trade unions and the workman was holding the post of Deputy General Secretary of the union and he was prime and main office bearer of the union, which fact was very well within the knowledge of the Party No.1 and the workman was representing the union before the various conciliation officers and was acting as defence representative in the matter of disciplinary actions initiated by Party No .1 in respect of few employees and it is not unlikely that it is for the said reasons only, the Party No. 1 decided to shift him to faraway place to curb the trade union activities and before issuing the order impugned, no notice was given to the workman, as required under the provision of para 535 of Sastry award and the order was issued with ulterior motive and in a most calculated and disgraceful manner by Party No.1 and suddenly on 04.02.2008, the workman was relieved from Laxminagar branch for Bhandara branch and when the workman was on leave for organization purposes, he was relieved from Laxminagar branch on 21.02.2008, actually without serving the order of transfer from Nagpur to Raipur on him and the workman protested against such transfer by his representation dated 22.02.2008 and by his notice dated 23.02.2008, but Party No.1 did not cancel the transfer, so the present industrial dispute was raised and the order of transfer of the workman was not an administrative order issued in public interest and there was neither a post of special assistant nor there was any need of a special assistant at Raipur and the transfer was not effected in normal circumstances and the same is illegal and arbitrary and unfair labour practice as provided in item 7 of the Vth Schedule to the Act and the transfer of the

workman was made in colourable exercise of powers by the party No.1 and therefore, the said order is liable to be set aside.

The union has prayed to declare that the party No.1 has indulged in unfair labour practices, to declare the order of transfer of the workman dated 07.02.2008 as illegal and unjustified and to set aside the same and to repatriate the services of the workman to his original branch *i.e.* Laxminagar branch.

3. The party No.1 in the written statement have admitted the amalgamation of UWBL with IDBI as per notification dated 30.09.2006 and that according to provisions of chapter V of the Scheme of amalgamation, "all the employees on the transferor bank shall continue in service and be deemed to have been appointed in the transferee bank at the same remuneration and on the same terms and conditions of service, as were applicable to such employees immediately before the close of business on 02.09.2006.

It is further pleaded by party No.1 that after the amalgamation, it became necessary to streamline their business strategy and fully integrate the different segments to active synergy and operating efficiency and for that transfer of various employees including the workman was done purely as an administrative decision and due to office exigencies and the transfer of the workman was in full conformity with the applicable settlement governing the terms and conditions of services of the employees of erstwhile UWBL and was not violative of any applicable laws or the terms of settlement governing the workman and the reference is not maintainable on the ground of absence of cause of action. It is further pleaded by party No.1 that in terms of clause 11 of the scheme of amalgamation, they closed/relocated/shifted 48 branches and five zonal offices of UWBL as well as the co-operative office, necessitating the redeployment of the employees to their new locations and the transfer of the workman was done in the routine way in normal course as was done in case of other employees and the service conditions of the workman were governed by the settlement dated July 11, 2005 and there were express provisions for transfer of award staff in the said settlement and the workman was deployed from Nagpur branch to Raipur branch, which was within the permitted distance of 300 Kms and hence, the statement of claim needs to be rejected in limine.

The party No.1 have pleaded further that the directions of the Assistant Labour Commissioner to declare the office bearers of the union as protected workmen was *vide* the proceedings dated 26th November, 2008, based on initial letter dated 11th February, 2008, whereas, the posting order of the workman was issued on 7th February, 2008, *i.e.* before the union had raised the demand for according protected workmen status for its office bearers and the workman was not a protected workman till the proceedings were recorded by the Assistant Labour Commissioner and the settlement dated 26th November, 1997 was in force for a period of three years, from the date of its inception and as such, the said settlement was not applicable with regards to the posts of special assistant due to efflux of time and at the time of transfer of the workman, the settlement dated 11th July, 2005 was in force and in the said settlement, there are express provisions for transfer of award staff and the discretion lies with the bank to identify the number of the employees to be redeployed from each centre/branch/office to meet its requirements and the workman was not transferred out of Nagpur since 1985 *i.e.* for more than 22 years and his transfer to Raipur branch was well within the permissible distance from his earlier place of posting *i.e.* Laxminagar branch in Nagpur and due to non continuance of the settlement of 1997, all the special assistants, who were employed by UWBL lost the protections available to them under the settlement of 1997, even though they continued to draw the salary of special assistants and this was further fortified from the fact that the settlement of 2005, which was entered into by the employees of UWBL and UWBL did not recognize the protections to any class of workers, on the contrary, a detailed policy of deployment of staff encompassing all was formulated and the same was accepted by the union in toto and therefore, there is no merit in the submission that the workman should have been transferred to a branch at least where a post of special assistant was in existence or the transfer should have been made in Municipal Limit only and the transfer order in perfectly legal and just and proper and the workman was paid the allowance of special assistant and categorized as special assistant, even after his transfer to Raipur and as the workman was neither the president nor the vice president or the secretary of the union and was the Deputy General Secretary of the union, he was not entitled for protection as provided in Sastry Award and the workman is not entitled to any relief.

4. In support of their respective stands, both the parties have led oral evidence, besides placing reliance on documentary evidence.

The workman has been examined as a witness by the union, whereas, one Shri Harshad Anil Kelkar has been examined as a witness by party No. 1.

The workman in his examination-in-chief, which is on affidavit has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has admitted that there was a settlement between the union and the management of UWBL on 11.07.2005 and as per schedule V of the said agreement, there was understanding for deployment of staff of the bank and as per Ext. W-III, the order of the ALC Mumbai dated 09.02.2010, the office bearers of the union were declared as protected workmen.

5. The evidence of the witness examined on behalf of party No.1 is also the reiteration of the facts mentioned in

the written statement filed by Party No. 1. In his cross-examination, the witness for Party No.1 has admitted that the workman was an office bearer of his union and he was working as a special assistant in UWBL and there was no post of special assistant at Raipur branch, but the workman was paid allowance of special assistant, while working at civil lines branch, Raipur.

6. Before delving into the merit of the matter, it is to be mentioned here that there is no dispute between the parties that as per the notification dated 30.09.2006, issued by the Government of India, Ministry of Finance, the UWBL was amalgamated with IDBI and all the employees of UWBL became the employees of IDBI *w.e.f.* 02.09.2006 and that the workman was working as a special assistant in UWBL, before such amalgamation and that while he was working as such in Laxminagar branch, he was transferred to Raipur branch of IDBI on 07.02.2008.

7. At the time of argument, it was submitted by the learned advocate for the union that according to clauses 12 and 15 of the settlement dated 26.07.1997, the transfer of a special assistant can only be made within city *i.e.* within the Municipal Corporation area, on administrative grounds, after a period of three years from the date of assignment of the duties of special assistant to him and the Party No.1 committed branch of the provisions of the said settlement and willfully violated the provisions by transferring the workman out of the state of Maharashtra. It was further argued by the learned advocate for the union that clause 535 of Sastry Award provides the procedure of transfer of award staff employees and that of the office bearers of Trade Unions and the workman was the Deputy General Secretary of the union and he was involved in various Trade Union activities and only to harass, victimize and discourage the workman from Trade Union activities, he was transferred to Raipur, in violation of clause 535 of Sastry Award and even though, the workman was a protected workman, he was transferred with ulterior motive and even though, there was no post of special assistant of Raiput branch, the workman was transferred to the said branch and the action of the Party No.1 is illegal and unfair labour practice and as such, the order of transfer is liable to be set aside and the workman is to be reposted to Laxminagar branch.

In support of such contentions, the learned advocate for the union placed reliance on the decision reported in 1995 I LW-678 (A.P. John *Vs.* Karnataka State Transport Corporation).

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the transfer of the workman was in full conformity with the applicable settlement governing the terms and conditions of services of the workman and there was no necessity of serving of any notice to the workman as per clause 535 of Sastry Award before his transfer and the UWBL entered into an agreement with their employees' union on 11.07.2005 and the same was applicable to the workman at the time of his transfer and in the said settlement thère were express provisions for transfer of award staff and the discretion of transfer lies with Party No.1 to meet its requirements and in accordance with Schedule V of the said settlement, the workman was transferred to Raipur branch on 07.02.2008 from Laxminagar branch, which is situated within the permitted distance of 300 kilometers, on account of exigencies of business of Party No.1 and there was no violation of any provision and since, the subject matter was/is subjudiced, and there was no specific request from the workman, he was not redeployed, after lapse of one year, as during the pendency of the dispute, the service condition is required to be unchanged and the conditions given in the amalgamation notification ended on 02.10.2009 and the terms and conditions of service prevailing in the Party No.1 have become applicable to the employees of UWBL including the workman, as per the internal circular dated 01.10.2009. It was further submitted by the learned advocate for the Party No.1 that the workman was transferred on 07.02.2008 and the union vide its letter dated 11.02.2008 furnished the list of the office bearers demanding to declare them as protected workman under the provision of the Act and the workman was not the President, Vice President or Secretary of the union at the time of his transfer, so he cannot be said to be a protected workman and the protection given in Sastry Award for transfer of office bearers is not applicable to him and the settlement dated 26.07.1997 expired after the expiry of three years, as per clause 19 of the said settlement and as such, the said settlement is not applicable to the workman due to efflux of time and the transfer of the workman is just and proper and in accordance with the provisions of the settlement applicable to the parties and it was never malafide or ill intent and there was no unfair labour practice or victimization and the workman is not entitled to any relief.

It was also submitted by the learned advocate for the Party No.1 that transfer of an employee is not only an incident inherent in the terms of employment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service and a challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirement of the situation concerned. In support of such contentions, the learned advocate for the Party No.1 placed reliance on the decisions reported in 2004 III CLR-78 (State of UP *Vs.* Goverdhan Lal) and 2008 III CLR-136 (Airport Authority of India *Vs.* Rajeev Ratan Pandey).

Now, keeping in view the principles enunciated by the Hon'ble Apex Courts in the decisions cited by the learned advocates for the parties, the case in hand is to be considered.

9. The first contention raised by the learned advocate for the union is that there was violation of clause 15 of the settlement dated 26.07.1997 (Exbit-W IV) as the transfer of the workman was not made with the city as provided in the said clause. There is no doubt clause 15 of the aforesaid settlement provided that, "without prejudice to the provisions, in respect of the transfers of award staff, as provided in bipartite settlement dated 19th October, 1966 as amended up to-date, a special assistant can be transferred within city on administrative grounds, after a period of three years from the date the duties of the special assistant are assigned to him.

The transfer within Municipal/Corporation/ agglomeration area shall be treated as transfer within city having the same CCA/HRA."

However, clause 19 of the settlement dated 26.07.1997 clearly provides that the said settlement was in force for a period of three years from the date of this settlement so the aforesaid settlement automatically became in operative, due to efflux of three years time from the date of signing of the settlement. Admittedly, the transfer of the workman was made on 07.02.2008. So the conditions of transfer as mentioned in the settlement dated 26.07.1997 were not applicable to the workman. The workman is not entitled to claim privilege from the said settlement.

10. The next contention raised by the learned advocate for the union is that the workman was a protected workman and as such, he should not have been transferred to Raipur and on that ground also, the transfer of the workman is illegal. However, from the own document filed by the union, Ext. W-III, it is found that the union made an application dated 07.07.2009 under sub-Rule 4 of Rule 61 of the Industrial Disputes (Central) Rules, 1957 ("the Rules" in short) to the Asstt. Labour Commissioner, Bombay-III for a direction to the Party No.1 to declare the members of the union as protected workmen and the Assistant Labour Commissioner (Central)-III, Mumbai on 9.02.2010 passed orders directing Party No.1 to declare the 16 office bearers of the union including the workman as protected workman. Admittedly, the workman had not been declared as a protected workman on the date of his transfer and there was no violation of any provision by the Party No.1 by transferring the workman to Raipur branch.

11. The third contention raised by the learned advocate for the union is that there was violation of the provision of 535 of the Sastry Award by Party No. 1 . Clause 535 of Sastry Award provides that,

1. "Every registered bank employees' union, from time to time, shall furnish the bank with the names of the President, Vice-President and the Secretaries of the union.

2. Except in very special cases, whenever the transfer of any of the above mentioned officers is contemplated, at least five clear working days notice should be put up on the notice boards of the bank of such contemplated action.

3. Any representations, written or oral, made by the union shall be considered by the bank.

4. If any order of transfer is ultimately made, a record shall be made by the bank of such representations and the banks reasons for regarding them as inadequate, and

5. The decision shall be communicated to the union as well as to the employee concern."

It is clear from the above provisions that the directions given in clause 535 are in regard to the transfer of the President, Vice-President and the Secretaries of the union. Admittedly, the workman was not the President, Vice- President or the Secretary of the union on the date of his transfer. He was the Dy. General Secretary. So the workman is not entitled to get the benefits of clause 535 of Sastry Award.

12. Schedule "V" of the memorandum of settlement dated 11th July, 2005, Exhibit-M-II, which was in operation on the date of transfer of the workman provides the deployment of staff of Party No.1. Clause-II of the said schedule provides that in cases necessitating deployment outside the district, the workman concerned may be deployed to any branch/office of the Bank situated outside the district up to a distance not exceeding 300 kilometers from his present place of posting and the tenure of such transfer should be three years, two years and one year, in case of transfer up to a distance of 100 Kms, 200 Kms and 300 Kms respectively. According to the Party No.1, the distance between Laxminagar branch and Raipur branch is 280 Kms and the transfer of the workman was well within the distance of 300 Kms. Though the workman has claimed that the distance between Laxminagar branch and Raipur branch is more than 300 Kms, there is no legal evidence on record in support of such claim. Hence, it cannot be said that the transfer of the workman was made beyond 300 kms and therefore is illegal.

13. Though the workman has claimed that his transfer was made to victimize him and to discourage him to take part in union activities and unfair labour practice was adopted by Party No.1, there is no legal evidence on record in support of such claims. From the materials on record, it cannot be held that there was any victimization or adoption of unfair labour practice by Party No. 1. Hence, the transfer of the workman cannot be declared as illegal.

14. Admittedly, the workman has already worked for more than five years at Raipur branch and that his transfer had been made to a place more than 200 Kms away, but less than 300 Kms. So the workman is entitled to be brought back to his previous place of posting or if the same is not

possible due to administrative ground, then to any of the three centers of the choice of the workman. According to the Party No.1, as the dispute raised by the union was subjudiced and there was no request by the workman, the workman could not be brought back to the original centre. Hence, it is necessary for the Party No.1 to bring back the workman to the original centre, from where he was transferred or if the same is not possible due to administrative ground, then to any one of the three centers opted by the workman. The workman is also entitled to get compensation of Rs. 1000/- per month as per the provision of clause IX of Schedule "V" of Ext. M-II. Hence, it is ordered.

ORDER

The action of the management of IDBI Bank Ltd., Mumbai in issuing office order No. 1779 dated 07.02.2008 transferring the services of Shri S.G. Bobde, workman from Nagpur Branch to Raipur Branch in Chattisgarh is legal and justified. However, the Party No.1 is directed to bring back the workman to the original centre from where he was transferred or if the same is not possible due to administrative ground, then to any one of the three centers opted by the workman. The workman is also entitled to get compensation of Rs. 1000/- per month as per the provision of clause IX of Schedule "V" of Ext. M-II, from the date of his joining at Raipur Branch till the date of his transfer from the said branch.

J.P. CHAND, Presiding Officer

नई दिल्ली, 29 अगस्त 2013

का॰आ॰ **2020.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 22/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/08/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/187/90-आईआर (बी-II)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th August, 2013

S.O. 2020.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/22/1999) of the Central Government Industrial Tribunal/Labour Court Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 01.08.2013

[No. L-12012/187/90-IR (B-II)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/22/1999 Date: 22.07.2013.

Party No. 1 The Zonal Manager,
Bank of India, S.V. Patel Road,
P.B. No. 4, Nagpur-440001.

Party No. 2 The Zonal Secretary,
Bank of India Workers' Organization,
House No. 542, Dr. Munje Marg,
Congress Nagar, Nagpur.

AWARD

(Dated: 22nd July, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman, Shri Bala Shesrao Barade to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, for adjudication, as per letter No. L-12012/187/90 IR (B-II) dated 25.09.1990, with the following schedule:—

> "Whether the action of the management of Bank of India, Nagpur by terminating the services of Shri Bala Shesrao Barade is justified? If not to what relief the workman concerned is entitled to?"

Subsequently, the reference was transferred to this Tribunal by the Central Government for disposal according to Law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Bank of India Workers' Organization ("the union" in short) filed the statement of claim on behalf of the workman, Shri Bala Shesrao Barade, ("the workman" in short), and the management of Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim by the union is that the workman came to be appointed in Newegaon Khairi Branch of Party No. 1 on 18.04.1983 and although no formal appointment order was issued to the workman, he was appointed on existing full time permanent vacancy and with the express consent of the Zonal Manager and though the engagement of the workman was to perform duties of full time permanent peon/sepoy, he was paid meager daily wages and the appointment and service conditions forced upon the workman were in violation of the provisions of various bi-partite settlements and awards, which govern the service

conditions of the employees of Party No. 1 and the workman was employed till 25.02.1985 and his services were terminated *w.e.f.* 25.02.1985 for reasons best known to Party No. 1 and the workman was not appointed thereafter, although vacancy continued and fresh hands such as, Shri Ramesh Tukaram Darwai, Shri Prabhakar Ramaji Dhurve, Shri Naresh Padmakar Raut, Shri Vasanta Ramchandra Darwai, Shri Moreshwar Vithoba Mandhenar and Shri Ashok Damodar Gajbhiye were appointed by Party No. 1 from time to time at Nawegaon Khairi Branch, in violation of the provisions of Section 25-H of the Act and out of them, Shri Ramesh Darwai is in employment of Party No. 1 even today as a peon-cum-seoy at Nawegaon Khairi Branch and one Shri Rajan Ghate, who was junior to the workman and who was working with the workman at Nawegaon Khairi Branch as a peon-cum-sepoy on daily wages was appointed as a permanent peon-cum-sepoy at the said branch and after the termination of the services of the workman, one Shri Vittal Shende was appointed as permanent sepoy-cum-peon at Kalmeswar Branch of Party No. 1 and the superior claim of the workman was ignored and thus, Party No. 1 violated the provisions of Section 25-H of the Act.

The further case as presented by the union is that Party No. 1 has been since last many years indulging in grave unfair labour practice of appointing persons from time to time on daily wages, under the guise of badlee employment and the practice of terminating such persons and to appoint fresh hands is rampant with the sole object to sabotage the claim of permanency and several disputes arising out of the aforesaid malpractice are pending before the Industrial Tribunals for adjudication and as the non-engagement of the workman and engagement of fresh hands is an unfair labour practice, the workman is entitled for reinstatement in service with continuity and all consequential benefits including wages and seniority.

3. The Party No. 1 in the written statement has pleaded *inter-alia* that the workman was not appointed on 18.04.1983 on any existing full time vacancy with express consent of the Zonal Manager, but he was engaged on purely casual basis for the first time on 18.04.1983 and as and when the workman reported and as and when there was work on leave vacancy and/or there was temporary increase of work, he was engaged purely on casual basis temporarily and the workman put in 317 days of work till 25.02.1985. It is also pleaded by Party No. 1 that specially in rural branches and one-man branches, against leave vacancy and /or when there is temporary increase of work, local hands are engaged in the sub-staff category on purely casual basis and they have no legal right or any cause to raise any dispute under the Act and Shri D.B. Bajan Ghate was engaged for the first time on casual basis on 31.03.1983, whereas, the workman was engaged for the first time on casual basis on 18.04.1983 and practically, in all branches of the Bank, casual sepoys/badlee sepoys were engaged directly by the Managers and they were not sponsored by the Employment Exchange, so it was decided to hold a simple written test on National Level, in order to empanel such workmen as badlee sepoy and /or to absorb them against available vacancies of sub-staff and accordingly, examination was held on 26.02.1984, where in the workman and Shri Bajan Ghate appeared and results of the said examination was declared on 09.02.1985, where in, both Shri Bajan Ghate and the workman were declared unsuccessful and in view of the same, both of them were discontinued in February, 1985 and thereafter, to maintain the continuous flow of work at the branch, indents were placed with the Employment Exchange on 12.02.1985, 27.02.1985, 26.03.1985 and 08.04.1985 for sponsoring the name of candidates, who could be empanelled as badlee sepoy and/ or who could be absorbed in available vacancies in the branch, as the case may be and in the last notice to the Employment Exchange, it was specifically stated that if the name of the candidates would not be received within 15 days, it would be presumed by the Bank that no candidates are available and in that event, they would empanel local persons in the panel of badlee sepoy and as the Employment Exchange did not respond to the said ultimate notice, the branch was constrained to empanel/ absorb local persons and as Shri D.B. Bajan Ghate and the workman had earlier been engaged as casual sepoys, it was decided to give them chance first and Shri Bajan Ghate was absorbed against the vacancy of permanent sepoy, since he was senior to the workman and in view of the aforesaid facts, provisions of Sections 25-F and 25-G are not applicable to the case of the workman.

The Party No. 1 has also pleaded that the workman worked for 128 days, 160 days and 29 days in 1983, 1984 and 1985 respectively and he had not worked for 240 days in a block of 12 months and in the preceding 12 months, he had put in only 160 days of work and they did not indulge in unfair labour practice and the workman is not entitled to any relief.

4. Besides placing reliance on documentary evidence, the union has examined six witnesses, namely, Shri B.S. Burade (the workman), Shri Vinayak Joshi, Shri Shirish A. Damle, Shri Arvind Madhukar Tamhaney, Shri Suresh N. Panwilkar and Shri Rajendra M. Dahikar in support of its claim.

One Shri Rajkumar Tulsiram Naik has been examined as the only witness by the Party No. 1.

5. At the time of argument, it was submitted by the union representative that the workman was engaged as a peon on 18.04.1983 at Nawegaon Khairi Branch of Party No. 1, against the existing full time permanent vacancy and the appointment was made by the Branch Manager with the consent and approval of the Zonal Manager of the Bank, Nagpur and the workman was enrolled in the Employment Exchange and sent by the Employment

Exchange as per bank's demand and though the workman was paid on daily wages basis, he was required to perform the duties of a full time peon and he worked continuously from 18.04.1983 to 25.02.1985 without a single day break and inspite of having permanent vacancy, the workman was not regularized by the Party No. 1 and juniors to the workman were retained and regularized by the Bank and the pleadings made in the statement of claim have not been specifically denied and dealt with in the written statement and the evidence of the witnesses examined on behalf of the union has not been seriously challenged in the cross-examination and the witness examined by the Party No. 1 has admitted the case of the workman and that he was engaged at the branch as per the direction of the Zonal Manager and it is clear from the evidence including the admission of the witness for party no.1 that the workman was terminated illegally and the Party No. 1 did not produce the documents, even though the documents were demanded by the union and the workman is entitled for reinstatement in service with continuity seniority, full back wages and all consequential benefits.

6. Per contra, it was submitted by the management representative that the workman was engaged on purely casual basis for the first time on 18.04.1983 on temporary basis on leave vacancy and or whenever there was increase of work on temporary basis and the workman did not complete 240 days of service in the preceding 12 calendar months and the workman in his evidence has admitted that he has no evidence of working continuously in the branch and he worked for 317 days in two years and had received the wages for the same and except the oral evidence, no document has been filed by the workman to demonstrate that he worked for 240 days continuously and the workman has failed to discharge the burden of proving of his working for 240 days in the preceding 12 months of the date of his termination and the evidence on affidavit of the other witnesses examined by the union is general in nature and no reliance can be placed on the same in absence of any documentary evidence to support the same and the provisions of Sections 25-F and 25-H do not apply to the case of the workman and his termination is perfectly legal and justified.

In support of the submissions, reliance was placed by Party No. 1 on the decisions reported in AIR 2004 SC-4791 (M.P. Electricity Board *Vs* Hariram), (2006) 1 SCC-106 (R.M. Yellatti *Vs* Asstt. Executive Engineer), (2006) 9 SCC-697 (Krishna Bhagya Jal Nigam Ltd. *Vs* Mohd. Raffi), (2006) 9 SCC-132 (Surendra Nagar District Paanchayat *Vs* Gangaben), Writ Petition No. 1072/2002 of Hon'ble Bombay High Court, Nagpur Bench and (2006) 6 SCC-221 (Reserve Bank of India *Vs* Gopinath Sharma).

7. At the outset, I think it necessary to mention that it is settled beyond doubt by the principles enunciated by the Hon'ble Apex Court in a string of decisions that the Tribunal cannot travel outside the terms of reference and the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto.

8. It is settled beyond doubt by the Hon'ble Apex Court in a number of decisions including the decisions reported in (2006) 1 SCC-106 (Supra), (2006) 9 SCC-697 (Supra) and (2006) 9 SCC -132 (Supra) to avail the benefits of Section 25-F of the Act, it is necessary for the workman to proof that in fact he had worked for 240 days in the preceding 12 months of the alleged date of termination and the burden of proof of such facts lies on the workman.

9. First of all, I will take of the submission made by the union representative regarding non production of documents by the Party No. 1. The term of reference in this case is regarding the legality or otherwise of the termination of the workman from services. On perusal of the materials on record including the pleadings of the parties, the claim of the workman about his engagement on 18.04.1983 and his termination from services on 25.02.1985 has been admitted by the Party No. 1 in their written statement. Accordingly to the union and the workman, the workman worked continuously from 18.04.1983 to 25.02.1985 without any break, whereas according to Party No. 1, the engagement of the workman was on casual basis as and when required and the same was not continuous from 18.04.1983 to 25.02.1985. The workman in his cross-examination has admitted that he was engaged as a casual employee and he does not have any evidence of his working continuously in the Bank and he worked for 316 days in the Bank and he had appeared in the test dated 26.02.1984 and he cannot say if he had passed the test or not and wages for 316 days were paid to him. In view of such admission by the workman, it is clear that he was not appointed against any permanent post and his engagement was on casual basis intermittently and he did not work continuously from 18.04.1983 to 25.02.1985 without any break. In view of the admission of the Party No. 1 about the engagement of the workman on 18.04.1983 on casual basis and working of the workman till 25.02.1985 intermittently and in view of the pleadings of the parties and the admission of the workman in his cross-examination as mentioned above and applying the principles enunciated in the decisions reported in AIR 2004 SC-4791 (Supra) and (2006) 1 SCC 156 (Supra) by the Hon'ble Apex Court regarding as to when adverse inference is to be drawn for non production of documents by a Party to the case in hand, it is found that there is no need to draw adverse inference against the Party No. 1 for non production of documents.

10. Though the reference has been made by the central Government for adjudication of the legality or otherwise of the termination of the workman, the union, in

the guise of raising the dispute on behalf the workman has tried to challenge the policy adopted by the Party No.1 of engaging persons on temporary basis, inspite of having number of permanent vacancies in the cadre of sub-staff at different branches of the Bank. In view of the settled principles that the Tribunal cannot travel beyond the terms of reference as already mentioned above and in view of the fact that such specific terms of reference has not been made by the Government, such claim cannot be adjudicated.

Moreover, from the materials on record including the pleadings of the parties, it is found that the engagement of the workman in this case as Budlee sepoy was not against any permanent vacancy in the branch, but his engagement was on temporary basis as a daily wager, as and when required basis against leave vacancy of the permanent sub-staff or due to temporary increase of workload in the branch.

At this juncture, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in (2006) 6 SCC-221 (supra). The Hon'ble Apex Court have held that:—

> "Labour Law-Daily wager-Disengagement of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held had no right to post."

11. At this juncture, I also think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in a catena of decisions including the decision reported in AIR 2006 SC- 1806 (Secretary, State of Karnatak *Vs.* Umadevi & others)(Constitutional Bench).

It is settled beyond doubt by the Hon'ble Apex Court that :—

> "Rules of recruitment cannot be relaxed and the court/Tribunal cannot direct regularisation of temporary appointees de hors of rules-State owned/ operated corporations-Appointment—Modes of appointment · Held regularization cannot be a mode of appointment- Public Sector- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment- Labour Law- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment- Regularization- Held, not a permissible mode of appointment."

It is also settled by the Hon'ble Apex Court that:—

> "The term 'temporary employee' is a general category which has under it several sub categories *e.g.* casual employee, daily-rated employee, *ad hoc* employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the state or its instrumentalities employee persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court cannot direct continuation in service of a non-regular appointee. Even if an *ad hoc* or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is one that would enable the jettisoning of the procedure establish by law for public employment."

It is also settled by the Hon'ble Apex Court that:—

"Employment on daily wage · Confers no right of permanent employment- Daily wager appointed on less than minimum wages—Not forced labour—Continued on post for long period—Daily wagers from a class by themselves. They cannot claim parity *vis-a-vis* those regularly recruited on basis of relevant rules and cannot be made permanent in employment.

Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who were working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming the equal wages for equal work. There is no fundamental right in those who have been employed in daily wages or temporally or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since, a regular appointment to be made only by making appointments consistent with the requirements of articles 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages, cannot be extended to a claim for equally treatment with those who were regularly employed. That would be

treating unequal as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules."

12. Perused the materials on record including the pleadings of the parties. Taking into consideration the materials on records and the submissions made during the course of argument by both the parties, it is found that the workman was engaged by Party No. 1 on 18.04.1983 on casual basis on daily wages and he worked intermittently as and when required basis till 25.02.1985. It is also found that the engagement of the workman was not according to the Rules of Recruitment of sub-staff of Party No. 1 against any permanent post. According to the own pleadings of the union and so also the evidence of the workman that the engagement of the workman was done by the Manager of the branch with the consent and approval of the Zonal Manager. Even if, the said claim is held to be true, still then, it cannot be said that the engagement of the workman is according to the Rules of Recruitment of Party No. 1, as it is neither pleaded nor proved that the workman was appointed by following a due process of selection as envisaged by the relevant Rules of Recruitment of Party No. 1 or that the name of the workman was called for alongwith others from the Employment Exchange and that after facing the interview the workman was selected for appointment. The workman or the union has not filed a single document regarding the appointment of the workman against a permanent post and his working continuously from 18.04.1983 to 25.02.1985.

So far the oral evidence adduced by the union in regard to the appointment and working days of the workman is concerned, it is found that workman himself has admitted that he worked for 316 days in total at Nawegaon Khairi Branch and wages for 316 days were paid to him and he has no document to show that he worked continuously with the Bank.

So far the evidence of Shri Vinayak Josh, Shri Shirish Anandrao Damle, Shri Arvind M. Tamhaney and Shri Rajendra M. Dahikar is concerned, the same is very general in nature and most part of their evidence is regarding the availability of vacancies in the Sub-Staff Cadre in different branches of the Bank of Party No. 1 and in respect of the policy adopted by Party No. 1 regarding engagement of badlee sepoy/peon instead of filling up the posts by making regular recruitment, which is not the subject matter of adjudication in this reference, as already mentioned above.

Shri Joshi in his examination-in-chief without mentioning the name of the workman has generally mentioned that every workman covered by the reference has completed 240 days in a consecutive 12 months period. Shri Joshi has not stated that the workman in fact had worked for 240 days in the preceding 12 months of the date of termination. Nothing has also been mentioned by Shri Joshi about the period during which every workman involved in the reference completed 240 days in a consecutive 12 months period. In his cross-examination, Shri Joshi has stated that the method of recruitment of sub-staff is to call for the names from the Employment Exchange and after interview, to select suitable candidates for permanent, temporary, full time and part time employees and in small branches having only one sub-staff, temporary arrangements have to be made by the Branch Manager with consultation with administrative office, which the said sub-staff proceeds on leave or sick and as per the document, Ext. W-10, Bank is allowing to appoint sub-staff/sepoy on casual basis in small branches.

Shri Damle, in his cross-examination has stated that the Bank has authorized the manager to engage casual employees.

The evidence of Shri Arvind M. Tamhaney in the examination-in-chief itself is contradictory to the stand taken by the union and the workman in the statement of claim. According to the union the workman worked continuously from 18.041983 to 25.02.1985 without a single day break, where is in paragraph 24 of his affidavit, Shri Tamhaney has mentioned that," In the instant case, the concerned employee was given illegal break in service by management on many occasion without any reason and with malafide intention."

Moreover, in his cross-examination, Shri Tamhaney has admitted that his affidavit is a general affidavit and the same does not have any specific reference to the concerned workman and the workman was working with the Bank intermittently for several years and he has not mentioned as to the period of engagement of the workman or the number of days he worked for the Bank.

Shri Suresh N. Panwilkar has been examined to show that the workman worked continuously at Nawegaon Branch from the date of the opening of the Branch. On perusal of the evidence of Shri Panwilkar, it is found that his evidence in the examination-in-chief itself is not consistent with the stands taken by the union in the reference. According to the case of the union and workman, the workman was appointed on 18.04.1983 and Shri Bajanghate was junior to him and Shri Bajanghate was retained and regularized by the Bank, where as the evidence of Shri Panwilkar is that the Branch of Nawegaon Khairi was opened on 31.03.1983 and the workman and Shri Bajanghate were appointed from the beginning of the Bank and the workman was discontinued after two years and Shri Bajanghate was removed earlier to the workman.

In view of the own admission of the workman as already mentioned above and the evidence on record, it is clear that the workman worked intermittently as a casual daily wager as and required and as he did not pass the

interviews held for permanent absorption, he was terminated from service on 25.02.1985 and as the workman has filed to plead and prove that he had in fact worked for 240 days in the preceding 12 months of the dated of his termination, *i.e.* 25.02.1985, he is not entitled to the benefits of Section 25-F of the Act and there was no need for Party No. 1 to comply with the provisions of Section 25-F of the Act.

13. At this juncture, I think it proper to mention about the principles envisaged by the Hon'ble Apex Court in the decisions reported in (2006) 6 SCC 221 (Supra) and AIR 2006 SC-839 (Supra).

In the decisions reported in (2006) 6 SCC 221 (Supra) the Hon'ble Apex Court have held that :

"Labour law Daily wager—Disengagement of—Validity—Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post—Hence, his disengagement on acquiring a qualification exceeding the maximum prescribed, held, could not be treated as arbitrary or amounting to wrongful dismissal within the meaning of item 3 of schedule II to Industrial Disputes Act, 1947— High Court erred in holding otherwise—Industrial Disputes Act, 1947, schedule II item 3—Wrongful dismissal—What is not—Post—Right to—Daily wager, held, devoid of such a right.

Labour law—Industrial Disputes Act, 1947—Ss. 256 and 25F- Applicability of Section 25G—Where High Court had not found the workman to have been retrenched within the meaning of S. 25F, held, it erred in holdings. 25G to be applicable.

In the decision reported in AIR 2006 SC—839 (Supra) the Hon'ble Apex Court have held that:

"Retrenchment—Respondent employed as messenger on daily wage basis by bank—No appointment letter issued to him—Termination of his service—Reference was not made regarding validity of retrenchment under S. 25G—But for not considering respondent for reemployment under S. 25H—Order of reference did not refer to S. 25G but only to S. 25H—Thus finding by Tribunal that order terminating services of respondent was in violation of S. 25G—Illegal—Further respondent in his application under S. 33-C(2) never raised plea that his services were illegally terminated—In circumstances High Court's view that termination of services of respondent was invalid under S. 25H—Not sustainable as S. 25H proceedes on assumption that retrenchment has been validly made.

Industrial Disputes Act (14 of 1947), schedule 3 item 1—Shastry award, para 497—Benefit under—Respondent employed by bank on *ad hoc* basis—no appointment order was issued—Dispensation of his services—Not in violation of para 497.

Para 497 deals with the right of apprentices and has no application to temporary employees like the respondent. Assuming that there was a violation of the Shastry award by the appellant bank in both cases either in not issuing appointment letters or not maintaining a seniority list, service book in respect of temporary employees etc., this would not mean that therefore the respondents had been properly appointed and their services wrongly terminated. Admittedly no procedure whether in law or under any award or settlement was followed either of the respondents in both appeals. No conditions of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely *ad hoc*. They had been appointed without considering any rule. It would be ironical if the person who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with."

Judging the case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, it is found that there is no merit in the case of the workman and he is not entitled to any relief. Hence, it is ordered:—

ORDER

The action of the management of Bank of India in terminating the services of Shri Bala Shesrao Barade is justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 29 अगस्त, 2013

का॰आ॰ 2021.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 20/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/08/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/188/90-आईआर (बी- II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th August, 2013

S.O. 2021.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/20/1999 of the Cent. Govt. Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Bank of India and their workman, and their workman, which was received by the Central Government on 01/08/2013.

[No. L-12012/188/90-IR(B-II)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/20/1999 Date: 25.06.2013

Party No. 1 : The Zonal Manager,
Bank of India, S.V. Patel Road,
P.B. No. 4, Nagpur-440001.

Party No. 2 : The Zonal Secretary,
Bank of India Workers' Organization,
House No. 542, Dr. Munje Marg,
Congress Nagar, Nagpur.

AWARD

(Dated: 25th June, 2013)

In exercise of the powrs conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short) the Central Government had referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman, Shri Ashok Bapurao Nanwatkar to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, for adjudication, as per letter No. L-12012/188/90-IR(B-II) dated 12.10.1990, with the following schedule:—

> "Whether the action of the management of Bank of India, Nagpur in terminating the services of Shri Ashok Bapurao Nanwatkar is justified? If not, to what relief the workman concerned is entitled to?"

Subsequently, the reference was transferred to this Tribunal by the Central Government for disposal according to Law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Bank of India Workers' Organisation", ("the union" in short) filed the statement of claim on behalf of the workman, Shri Ashok Bapurao Nanwatkar, ("the workman" in short) and the management of Bank of India, ("Party No. 1" in short) filed their written statement.

The Case of the workman as presented in the statement of claim by the Union is that the workman entered in the service of Party No. 1 on 10.12.1985 as a Badlee Sepoy on daily wages in Saoner Main Branch and he was required to work at Saoner, Kelward, Nandgomukh and Telmampetee branches, whenever the regular sepoy was remaining absent and his appointment was through the Employment Exchange and with the consent of Zonal Manager and the General Manager of the Bank and he continued to work as such till 19.01.1988, on which date, his services were terminated abruptly by the Manager of Saoner Branch, without assigning any reason and without serving any termination notice or order him, as required by Sastry Award and Bipartite Settlements and therefore, the termination of his services was highhanded and totally illegal and the workman had worked for more than 240 days in the preceding one year of his termination and in view of completion of one year of continuous service, he ought to have been continued in service and by terminating his services, Party No. 1 violated the provisions of the Act.

The further case of the workman as presented by the union is that at no point of time, the Party No. 1 gave him any appointment order and such act of Party No. 1 was also in violation of the provisions of Sastry Award and various Bipartite Settlements and Party No. 1 used to give illegal break during the long span of service of the workman and lastly to get rid of him and with malafide intension, the Party No. 1 terminated his services, without giving him any termination notice or compensation and thus violated the provisions of the Act. It is also pleaded by the union that instead of appointing the workman in a permanent post of sepoy, Party No. 1 appointed one Jayant Sure directly, superseding him and there by deprived him from his legitimate claim of permanent service in the Bank and after his termination, number of persons were engaged by Party No. 1 for different span of time and the entire records, which can prove his case are in possession of the Party No. 1 and as such, it is necessary to direct the Party No. 1 to produce those relevant documents.

The union has prayed for the reinstatement of the workman in service on a permanent post of sepoy with continuity in service, full back wages and all consequential benefits.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the workman was engaged as Badlee Sepoy on daily wages, at their Saoner Branch *w.e.f.* 10.12.1985, but such engagement was not with the consent of their General Manager and the workman was not disengaged/discontinued by them, but the workman himself abruptly stopped coming to the branch, for the reason best known to him and on several occasions, the workman was contracted by the Manager, Saoner Branch and was advised by him to come to work as Badlee Sepoy, whenever such vacancy arose due to taking of leave by the regular Sub-Staff and/or whenever there was temporary increase of work, but the workman flatly refused to work as Badlee Sepoy and asked for his absorption as a permanent Sub-Staff in the Bank's service. Party No. 1 has also pleaded that during the course of conciliation before the Assistant Labour Commissioner (Central), Nagpur, it was emphasized by them that they would have no objection, if the workman would work as Badlee Sepoy against leave vacancy of regular Sub-Staff and/or temporary increased of work, as and when would arise and the workman was advised to report at the branch immediately for his such engagement

and accordingly though the workman started reporting for duties as Badlee Sepoy, the same was very infrequent and before the ALC, it was submitted by them that the candidature of the workman would be considered for absorption as permanent Sub-Staff against furture vacancy as and when the same would arise, and the workman though became very irregular, he used to send letters by post alleging that though he was reporting for duty, he was not being engaged and sending such letters by the workman was an attempt to create alibi that he was not being engaged as Badlee Sepoy at the branch.

Party No. 1 has admitted that the workman had put in more than 240 days of service with them in the preceding 12 months, but it has been pleaded that only because of the same, the workman is not entitled for absorption as permanent Sub-Staff and as the workman himself had stopped reporting for work, they cannot be held responsible for the same and there was no violation of the provisions of the Act by them and the demand for production of the ducuments has no relevance and the workman be directed to report at Saoner Branch to work as Badlee Sepoy as and when required.

4. Besides placing reliance on the documents, both the parties have led oral evidence in support of their respective claims. The union has examined six witnesses including the workman in support of case. The witnesses examined on behalf of the workman are (1) Shri Ashok Nanwatkar (the workman), (2) Shri Vinayak Joshi, (3) Shri Shirish Damle, (4) Shri Arvind Tamhaney, (5) Shri Rajendra Dahikar and (6) Shri Tilak Virji Maishere.

Only one witness, namely, Shri Chandrakanta Purusottam Ghaskadvi has been examined on behalf of the Party No. 1.

5. Before delving in to the merit of the matter, I think it necessary to mention here that it is well settled by the principles enunciated by the Hon'ble Apex Court in a number of decisions that the Tribunal cannot travel outside the reference and the jurisdiction of the Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and matters incidental then to.

In this case, the reference has been made by the Central Government for adjudication as to whether the termination of the services of the workman by Party No. 1 is justified or not and if the same is not justified, then to what relief or reliefs the workman is entitled. In view of such scheduled of reference, the only point for consideration is the legality or otherwise of the termination of the workman from services by the Party No. 1.

I think it necessary to mention here that in the schedule of reference the date on which, the services of the workman were terminated has not been mentioned. Of course, the union in the statement of claim has mentioned that the workman was terminated from services *w.e.f.* 19.02.1988.

6. On perusal of the pleadings of the parties, it is found that the Party No. 1 has admitted the claim of the workman that he was engaged as Badlee sepoy on daily wages at Saoner Branch *w.e.f.* 10.12.1985 and he had put in more than 240 days of service in the preceding 12 months of the alleged date of termination. However, the Party No. 1 has pleaded that they did not terminate the workman from services, but the workman himself did not report for work and refused to work on termporary basis.

In view of the admission of Party No. 1 that the workman was engaged on 10.12.1985 and he had worked for more than 240 days in the preceding 12 months of his alleged termination, there is no need to analyze the evidence adduce by the parties in the respect. In view of the facts mentioned above, with respect, I am of the view that the decisions reported in 2006(1)SCC-106 (R.M. Yellati *Vs* Asstt. Executive Engineer), (2006) 9 SCC-697 (Krishna Bhagya Jal Nigam Ltd. *Vs* Mohd. Rafi), (2006) 9 SCC-132 (Surendra Nagar Dist. Panchyat *Vs* Ganghben) and Writ Petition No. 1072/2002 (Hon'ble Bombay High court, Nagpur Bench) and which have been cited by the Party No. 1 on the point of burden of prove of working of 240 days preceding the date of termination by the workman, have no clear application.

7. At the time of argument, much emphasis was given by the union representative to draw adverse inference against the Party No. 1 for non production of documents, inspite of the order passed by the Tribunal. However, I find no ground to draw adverse inference against the Party No. 1 for non production of documents, in view of the admissions as mentioned above and the principles enunciated by the Hon'ble Apex Court regarding drawing of adverse inference for non production of ducuments in the decisions reported in (2006) 1 SCC-106(Supra) and AIR 2004 SC-479 (M.P. Electricity Board *Vs* Hariram).

8. Now, the question for consideration is as to whether, the workman did not report for work and he refused to work on temporary basis and there was no termination by the Party No. 1. On perusal of the materials on record, it is found that Party No. 1 has failed to prove such claim by adducing cogent evidence in that regard. It is clear from the evidence on record that though the workman had worked for more than 240 days prior to 19.01.1988, Party No. 1 terminated his services without service of one months' notice or payment of one months' wages in lieu of notice and retrenchment compensation, which are mandatory as per the provisions of Section 25-F of the Act. Hence, the termination of the services of the workman is illegal.

9. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled. It is the admitted case of the workman and so also the case of the

Party No. 1 that the workman was engaged as a Badlee Sepoy on daily wages basis and he was engaged in four different branches of the Bank, whenever, the regular sepoy remained absent. The engagement of the workman was not against any regular post, but his engagement was on the basis of need of work on daily wages. The workman was engaged as daily wager by Party No. 1 in the year 1985 *i.e.* 10.12.1985 and his engagement continued intermittently up to 19.01.1988.

Taking into consideration the facts mentioned above, I think it proper to mention about the recent decision of the Hon'ble Apex Court reported in 2010 (8) SCALE-583 (Incharge Officer & another *Vs* Shankar Shetty) in this regard. The Hon'ble Apex Court has held that:

"Industrial Disputes Act 1947/Section 25F/Daily wager/Termination of service in violation of section 25(F)/ Award of monetary compensation in lieu of reinstatement/ Respondent was initially engaged as daily wager by appellants in 1978/His engagement continued for about 7 years intermittently up to 06.09.85/Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in sec. 25(F) of the Act/ Labour Court rejected respondents claim: holding that section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 06.09.85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal-Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of section 25(F) of the Act—Allowing the appeal-held:

The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 year intermittently up to September 6, 1985 *i.e.* about 25 years back. In a case such as the present one it appears to us that relief of reinstatment cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatment shall be appropriate, just and equitable".

The principles enunciated by the Hon'ble Apex Court in the above decision are quite applicable to this case. So, applying the principles enunciated by the Hon'ble Apex Court to the present case, it is found that the relief of the reinstatement cannot be justified and instead monetary compensation would meet the ends of justice and in my considered opinion, monetary compensation of Rs. 25,000 (Rupees twenty-five thousand) in lieu of reinstatement shall be appropriate, just and equitable, Hence, it is ordere:—

ORDER

The action of the management of Bank of India in terminating the services of Shri Ashok Bapurao Nanwatkar is not justified. The workman is entitled for monetary compensation of Rs. 25,000 (Rupees twenty five thousand only) in lieu of reinstatement. The Party No. 1 is directed to carry out the award within one month from the date of publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 29 अगस्त, 2013

का॰आ॰ 2022.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपूर के पंचाट (संदर्भ संख्या 31/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/8/2013 को प्राप्त हुआ था।

[सं॰ एल-12011/60/92-आईआर(बी-II)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th August, 2013

S.O. 2022.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/ NGP/31/1999) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Bank of India and their workman, which was received by the Central Government on 01.08.2013.

[No. L-12011/60/92-IR(B-II)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/31/1999 Date: 22.07.2013.

Party No. 1 The Regional Manager,
Bank of India, 13-Mul Road,
Chanrapur-442401.

Party No. 2 Shri S.R. Tripurwar, Regional Secretary,
Bank of India Workers' Organisation,
Shri Ram Ward, Ram Mandir,
Chandrapur-442401.

AWARD

(Dated: 22nd July, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub- section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial

dispute between the employers, in relation to the management of and their workmen, Shri V.V. Siddam, Shri A.G. Chahande, Shri B.J. Datarkar, Shri P.D. Madheswar and Shri G.M. Mendulkar to the Central Government Industrial Tribunal -cum-Labour Court, Jabalpur for adjudication, as per letter No. L.-12011/60/92-IR (B-II) dated 12.03.1993, with the following schedule:—

> "Whether the action of the management of Bank of India, Chandrapur in terminating the services of Shri V.V. Siddam from 13.06.91, Shri A.G. Chahande from 30.12.90, Shri B.J. Datarkar from 23.05.89, Shri P.D. Madheshwar from 19.04.91 and Shri G.M. Mendulkar from 19.04.91 respectively is legal and justified? If not, what relief the workmen are entitled to?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Bank of India Workers' Organisation" ('the union" in short), filed the statement of claim on behalf of the five workmen, ("the workmen" in short) and the management of Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the five workmen as projected by the union in the statement of claim is that it (union) is duly registered under the Indian Trade Unions Act, 1926 and the workmen involved in the dispute are its members and party no.1 is a Nationalised Bank and the service conditions of the employees of the Bank are *inter-alia* governed by the provisions of Sastry Award, Desai Award and Bipartite Settlements and this is a common reference for the action impugned for termination of the five workmen by party no.1 and brief facts in respect of each employee are mentioned separately for clarity and convenience and such facts are:—

Case of Shri N.V. Siddam

The workman, Shri N.V. Siddam was appointed at Engineering college extension counter, Chandrapur *w.e.f.* 07.06.1990 and his services came to be terminated *w.e.f.* 13.06.1991 and he worked for more than 240 days, preceding the date of termination and payment was made to him on vouchers purported to have been shown as reimbursement to the Branch Manager, to avoid obligation of law and the vacancy was filled in subsequent to the termination of Shri Siddam, by one Shri Dewanand Madhav Uike and no retrenchment compensation was paid to the workman before his termination and therefore, the termination is illegal and unjustified.

Case of Shri A.G. Chahande

The workman was employed as a sub-staff at Vilam Branch *w.e.f.* 15.03.1990 in a clear vacancy and the salary paid to him was illegally shown as reimbursement to Branch Manager through office voucher to avoid obligation of law and the services of the workman were utilized for the whole day for doing sub-staff work and the vacancy was a clear vacancy and his services were termination on 30.12.1990 and the workman had put in one year of continuous service as contemplated by section 25-B of the Act and before such termination, no retrenchment compensation as required under the law was paid and as such, his termination is illegal.

Case of Shri B.J. Datarkar

The workman was appointed as a sub-staff at Chikli branch right from the date of inception of the branch in a clear vacancy, but his services were illegally terminated *w.e.f.* 23.05.1989 *i.e.* after putting in more than 240 days of work preceding the date of termination and duties of sub-staff were extracted from him without making payment in accordance with the provisions of the Bipartite Settlement and after the termination of the workman, one Shri Bathkal, who was junior to the workman was appointed in his place and no retrenchment compensation as contemplated under the law was paid to him and therefore, provisions of sections 25-B, 25-F and 25-H are attracted and the termination of the workman is illegal.

Case of Shri P.D. Madheshwar

The workman came to be appointed as a sub-staff on 03.10.1988 at Gunjewahi branch, right from the date of opening of the said branch and he put in continuous service of more than two years and finally his services were terminated *w.e.f.* 19.04.1991 and after his termination, a junior person was appointed in his place and the workman by virtue of having put in more than 240 days of service in a clear vacancy, he had acquired the status of a confirmed employee and no retrenchment compensation was paid to him prior to termination and the termination of the workman attracts sections 25-F and 25-H of the Act and the termination is bad in law.

Case of Shri G.M. Mendulkar

The workman came to be appointed in the subordinate cadre at Neri Branch *w.e.f.* 01.01.1985 in a clear vacancy and he had put in more than 240 days of work preceding 12 months of the date of termination *i.e.* 19.04.1991 and after his termination, one Shri Vijay Borsare was appointed, who was junior to the workman in service and therefore, the provisions of sections 25-F and 25-H are applicable and no retrenchment compensation was paid to the workman and therefore, the termination of the workman is illegal.

It is further pleaded by the union that all the five workmen were appointed against clear vacancy and each of them had worked for more than 240 days in the preceding 12 calendar months of the date of their respective termination and none of them was terminated as a

consequence of any departmental enquiry and junior employees were given preference in the vacancy created due to termination of the services of the workmen and as there was violation of the provisions of sections 25-F and 25-H of the Act by the party no.1, the termination of all the five workmen is therefore, ab-initio bad in law and party no.1 played mischief in making payment of salary to the workmen through vouchers purported to have been reimbursement to the Branch Manager and such action of party no.1 amounts to unfair labour practice.

The union has prayed to declare the action of the party no. 1 in terminating the services of the workmen as illegal and to reinstate the five workmen in service with all consequential benefits.

3. The party no. 1 in the written statement has pleaded *inter-alia* that the services of Shri Siddam were utilized purely on casual basis as a stop gap arrangement pending appointment to the vacancy of sub-staff by usual procedure and he did not complete 240 days of service preceding his discontinuance/non-employment and pending the regular selection of sub-staff, it was necessary to give minimum expected services to the customers and as such, the services of Shri Siddam were utilized by the Branch Manager as stop gap arrangement only and Shri Devandra Madhav Uikey was selected as a regular sub-staff after following the procedure and the same was not in the vacancy of Shri Siddam, as the employment of Shri Siddam was being casual in nature and as he did not put in 240 days of continuous services, he was not entitled to any retrenchment compensation and there was also no question of giving any charge sheet, since there was no charge against him and the further non-employment of Shri Siddam was due to the regular appointment of the Sub-staff in the Engineering college extension counter, Chandrapur.

It is also pleaded by the party no.1 that after opening of Vilam branch, pending regular appointment of sub-staff, the services of Shri Chahande were utilized on casual basis as a stop gap arrangement by the branch manager to provide minimum expected customer services and under the own authority of the branch manager, payment was made to Shri Chahande, which was reimbursed to the branch manager and such procedure was followed for the reasons as mentioned above and not to avoid any obligation of law and there was no illegality in the said procedure and Shri Chahande did not complete one year of continuous service as contemplated by section 25-B of the Act and there was no question of departmental enquiry, since there was no dismissal/termination as alleged and further non-employment of the workmen was due to appointment of a regular sub-staff in the said branch.

The further case of party no. 1 is that the services of Shri Datarkar were utilized purely on casual basis as a stop gap arrangement pending appointment to the vacancy of sub-staff by usual procedure and he did not complete 240 days of service preceding his discontinuance/non-employment and pending the regular selection of sub-staff, it was necessary to give minimum expected services to the customers and as such, the services of Shri Datarkar were utilized by the Branch Manager as stop gap arrangement only and Shri Devandra Madhav Uikey was selected as a regular sub-staff after following the procedure and the same was not in the vacancy of Shri Datarkar, as the employment of Shri Datarkar was being casual in nature and as he did not put in 240 days of continuous services, he was not entitled to any retrenchment compensation and there was also no question of giving any charge sheet, since there was no charge against him and the further non-employment of Shri Datarkar was due to the regular appointment of the Sub-staff in the Engineering college extension counter, Chandrapur.

It is also pleaded by the party no. 1 that after opening of Ganjewahi branch, the services of Shri P.D. Madheshwar were utilized on casual basis as a stop gap arrangement by the branch manager to provide minimum expected customer services and under the own authority of the branch manager, payment was made to Shri P.D. Madheshwar, which was reimbursed to the branch manager and such procedure was followed for the reasons as mentioned above and not to avoid any obligation of law and there was no illegality in the said procedure and Shri P.D. Madheshwar did not complete one year of continuous service as contemplated by section 25-B of the Act and there was no question of departmental enquiry, since there was no dismissal/ termination as alleged and further non-employment of the workmen was due to appointment of a regular sub-staff in the said branch.

The further case of party no. 1 is that the services of Shri Medulkar were utilized purely on casual basis as a stop gap arrange pending appointment to the vacancy of sub-staff by usual procedure and he did not complete 240 days of service preceding his discontinuance/non-employment and pending the regular selection of sub-staff, it was necessary to give minimum expected services to the customers and as such, the services of Shri Mendulkar were utilized by the Branch Manager as stop gap arrangement only and Shri Devandra Madhav Uikey was selected as a regular sub-staff after following the procedure and the same was not in the vacancy to Shri Mendulkar and as the employment of Shri Mendulkar was being casual in nature and as he did not put in 240 days of continuous services, he was not entitled to any retrenchment compensation and there was also no question of giving any charge sheet, since there was no charge against him and the further non- employment of Shri Mendulkar was due to the regular appointment of the sub-staff in the Engineering college extension counter, Chandrapur.

Party no. 1 has further pleaded that the employment of the workmen was purely of casual nature and as a stop

gap arrangement pending selection of the regular staff by normal procedure and their appointment was made by the respective branch managers, who have no authority to appoint any person, but who were authorized to make stop gap arrangement to provide minimum expected services to the customers, in the absence of a regularly appointed employee and no junior employee had been given precedence as alleged and the services of the workmen came to an end automatically with the appointment of the regular employee and their cases were not cases of termination from service, but the same were cases of non-employment and the provisions of sections 25-F and 25-H of the Act had no application to their cases and the workmen are not entitled to any relief.

4. In support of the claim, the union has examined six witnesses including two workmen, besides placing reliance on the documentary evidence. The witnesses examined by the union are (1) Shri Vilas Siddam (workman), (2) Shri Arun D. Mahadeshwar (workman), (3) Shri Vinayak Joshi, (4) Shri Shirish A. Damle, (5) Shri Arvind M. Tamhaney and (6) Shri Rajendra M. Dahikar.

Party No. 1 has not adduced any oral evidence.

5. At the outset, I think it necessary to mention that it is settled beyond doubt by the principles enunciated by the Hon'ble Apex Court in a string of decisions that the Tribunal cannot travel outside the terms of reference and the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto.

6. During the course of argument, it was submitted by the union representative that the workmen were appointed by the respective Branch Managers with the consent and approval of the Zonal Manager and they were sponsored by the Employment Exchange and they performed the duties of full time peons, although they were paid on daily wage basis and they worked continuously between 1984 to 1989 and despite the existence of permanent vacancies, Party No. 1 did not regularize the workmen and there was violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act and the Party No. 1 adopted unfair labour practice. It was further submitted by the union representative that Party No. 1 has virtually admitted the allegations made in the statement of claim, in the written statement and the oral evidence adduced by the workmen, which has not been challenged seriously in the cross-examination, the documentary evidence produced by the workmen and absence of any rebuttal evidence from the side of Party No. 1 have fully proved the claim of the workmen and as such, the workmen are entitled for reinstatement in service with continuity, full back wages and all consequential benefits. It was also submitted by the union representative that during the conciliation proceedings before the ALC, Chandrapur, Minutes of understanding were signed by the union and party no. 1 and party no. 1 assured to absorb the workmen, Shri Qureshi and Shri Bamburde and also gave assurance for absorption of the three other workmen, but party no. 1 did not implement the said settlement, which is quite illegal and the workmen are entitled for their absorption against permanent vacancies.

It was further submitted by the union representative that though the Tribunal passed orders directing the Party No. 1 to produce the relevant documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against Party No. 1 and the reference is to be answered in favour of the workman.

7. Per contra, it was submitted by the representative for the Party No. 1 that the workmen were engaged on purely casual basis temporally for different spells, in the respective branches and their engagement was as and when required basis, due to taking of leave by the permanent Sub-staff or temporary increase of work load in the branch and none of the workmen completed 240 days of work in the preceding 12 calendar months of the alleged date of termination and the workmen have admitted such facts and the evidence on affidavits of the witnesses examined by the workmen are general affidavits and no reliance can be placed on the same, as no document has been produced by the workmen to demonstrate that they had worked for 240 days in the preceding 12 months of the alleged date of termination and the workmen have failed to discharge the burden of proving that in fact they had worked for 240 days in the preceding 12 months of the date of termination, so the provisions of the Act are not applicable and adverse inference is not to be drawn for non production of the documents and Party No. 1 did not adopt any unfair labour practice and the workmen are not entitled to any relief.

In support of the submissions, reliance was placed by Party No. 1 on the decisions reported in AIR 2004 SC-4791 (M.P. Electricity Board *Vs* Hariram), (2006) 1 SCC-106 (R.M. Yellatti *Vs* Asstt. Executive Engineer), (2006) 9 SCC-697 (Krishna Bhagya Jal Nigam Ltd. *Vs.* Mohd. Raffi), (2006) 9 SCC-132 (Surendra Nagar District Panchayat *Vs* Gangaben), Writ Petition No. 1072/2002 of Hon'ble Bombay High Court, Nagpur Bench, (2006) 6 SCC-221 (Reserve Bank of India *Vs.* Gopinath Sharma) and AIR 2006 S.C.-839 (Regional Manager, SBI *Vs* Rakesh Kumar).

8. First of all, I will take of the submission made by the union representative regarding drawing of adverse inference against the party no. 1, for non production of the documents. Admittedly, order was passed by the Tribunal directing the party no. 1 to produce documents as demanded by the union. However, the party no. 1 failed to produce the documents. The terms of reference in this case is as to whether the five workmen are entitled to get the employment. On perusal of the materials on record

including the pleadings of the parties, it is found that the claim of the workmen about their engagement on different branches on casual basis on daily wages has been admitted by the party no. 1 in the written statement. Moreover, the union during the course of hearing of the case has produced almost all the documents, which it had demanded for production by party no. 1. In view of such admitted facts and applying the principles enunciated by the Hon'ble Apex Court in the decisions reported in AIR 2004 S.C-4791 (supra) and (2006) 1 SCC-106 (supra) in regard to drawing of adverse inference for non production of documents by a party, to the case in hand, it is found that there is no need to draw adverse inference against the party no. 1 for the non production of the documents.

9. Though the reference has been made by the Central Government for adjudication of the dispute as to whether the workmen are entitled to get employment, the union, in the guise of raising the dispute on behalf the workmen has tried to challenge the policy adopted by the party no. 1 of engaging persons on temporary basis, inspite of having number of permanent vacancies in the cadre of sub-staff at different branches of the Bank. In view of the settled principles that the Tribunal cannot travel beyond the terms of reference as already mentioned above and in view of the fact that such specific terms of reference has not been made by the Government, such claim cannot be adjudicated.

Moreover, from the materials on record including the pleadings of the parties, it is found that the engagement of the workmen in this case by party no.1 was not against any permanent vacancy in the respective branches, but their engagement was on temporary basis as daily wages, as and when required basis, against leave vacancy of the permanent sub-staff or due to temporary increase of workload in the branch.

10. At this juncture, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in (2006) 6 SCC-221 (supra). The Hon'ble Apex Court has held that:—

> "Labour Law-Daily wager-Disengagement of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held had no right to post."

11. At this juncture, I also think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in a catena of decisions including the decision reported in AIR 2006 SC-1806 (Secretary, State of Karnatak *Vs.* Umadevi & others) (Constitutional Bench).

It is settled beyond doubt by the Hon'ble Apex Court that:—

> "Rules of recruitment cannot be relaxed and the court/Tribunal cannot direct regularisation of temporary appointees de hors of rules-State owned/operated corporations-Appointment-Modes of appointment-Held regularization cannot be a mode of appointment-Public Sector- Appointment-Mode of appointment-Held, regularization cannot be a mode of appointment- Labour Law-Appointment-Mode of appointment-Held, regularization cannot be a mode of appointment-Regularization-Held, not a permissible mode of appointment."

It is also settled by the Hon'ble Apex Court that:—

"The term 'temporary employee' is a general category which has under it several sub-categories *e.g.* casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the state or its instrumentalities employee persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court cannot direct continuation in service of a non-regular appointee. Even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is one that would enable the jettisoning of the procedure establish by law for public employment."

It is also settled by the Hon'ble Apex Court that:—

"Employment on daily wage-Confers no right of permanent employment-Daily wager appointed on less than minimum wages-Not forced labour-Continued on post for long period-Daily wagers from a class by themselves-They cannot claim parity *vis-a-vis* those regularly recruited on basis of relevant rules and cannot be made permanent in employment.

Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who were working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against

those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming the equal wages for equal work. There is no fundamental right in those who have been employed in daily wages or temporally or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since, a regular appointment to be made only by making appointments consistent with the requirements of articles 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages, cannot be extended to a claim for equally treatment with those who were regularly employed. That would be treating unequal as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules."

12. It is also well settled by the Hon'ble Apex Court in a catena of decisions including the decisions reported in (2006) 1 SCC-106 (Supra), and (206) 9 SCC-697 (Supra) that the onus to prove the 240 days' of continuous service lies on the workman and it is for workman to adduce cogent evidence, both oral and documentary and mere affidavits and self serving statements made by the workman will not suffice.

So, keeping in view the settled principles as enunciated by the Hon'ble Apex Court mentioned above, now, the case in hand is to be considered.

13. The two workmen, namely, Shri Vilas B. Siddam and Shri Arun D. Madheswar in their examination-in-chief have reiterated the stands taken by the union in the statement of claim. They have further stated in their examination-in-chief that their appointment was made by the party no.1 after due selection in the interview and their names were sponsored by the employment exchange. However, such statements cannot be taken into consideration in absence of such pleadings in the statement of claim. Nothing has been mentioned in the statement of claim as to how the workmen came to be appointed in the respective branches of the Bank and as to who appointed them. Moreover, during the course of argument, it was submitted by the union representative that the workmen were appointed by the respective branch managers with the approval of the Zonal Manager and the names of the workmen were sponsored by the employment exchange, which is quite contradictory to the evidence of the workmen. In absence of such pleadings and any documentary evidence on record in that regard, such statements cannot be relied upon.

In his cross-examination, workman, Shri Siddam has stated that he received the interview call from the employment exchange, but he has not filed the copy of the interview letter and he was not issued with any appointment order and he has not submitted any evidence to show that he worked in the said bank.

Workman, Shri Madheswar in his cross-examination has stated that he has not filed any document to show that his name was sponsored by employment exchange and that he was called for the interview by the Bank. He has admitted that he was engaged by the Bank on daily wages and he has not filed any document in support of his claim that he worked for 635 days and he had completed more than 240 days of work from 1988 to August 1989 and from September, 1989 to June, 1990. He has also admitted that he was engaged by the branch manager as and when required.

14. So far the evidence of Shri Vinayak Joshi, Shri Shirish Anandrao Damle, Shri Arvind M. Tamhaney and Shri Rajendra M. Dahikar is concerned, the same is very general in nature and most part of their evidence is regarding the availability of vacancies in the Sub-Staff Cadre in different branches of the Bank of Party No. 1 and in respect of the policy adopted by Party No. 1 regarding engagement of badlee sepoy/peon instead of filling up the posts by making regular recruitment, which is not the subject matter of adjudication in this reference, as already mentioned above.

Shri Joshi in his examination-in-chief without mentioning the name of any of the workmen has generally mentioned that every workman covered by the reference has completed 240 days in a consecutive 12 months period. Shri Joshi has not stated that the workmen in fact had worked for 240 days in the preceding 12 months of the date of termination. Nothing has also been mentioned by Shri Joshi about the period during which every workman involved in the reference completed 240 days in a consecutive 12 months period. In his cross-examination, Shri Joshi has stated that the method of recruitment of sub-staff is to call for the names from the Employment Exchange and after interview, to select suitable candidates for permanent, temporary, full time and part time employment and in small branches having only one sub-staff, temporary arrangements have to be made by the Branch Manager with consultation with administrative office, when the said sub-staff proceeds on leave or sick and as per the document, Ext. W-10, Bank has permitted to appoint sub-staff/sepoy on casual basis in small branches.

Shri Damle, in his cross-examination has stated that the Bank has authorized the manager to engage casual employees.

The evidence of Shri Arvind M. Tamhaney in the examination-in-chief itself is contradictory to the stand taken by the union and the workman in the statement of claim. According to the union the workman worked continuously

from 18.04.1983 to 25.02.1985 without a single day break, where is in paragraph 24 of his affidavit, Shri Tamhaney has mentioned that, "In the instant case, the concerned employee was given illegal break in service by management on many occasion without any reason and with malafide intention."

Moreover, in his cross-examination, Shri Tamhaney has admitted that his affidavit is a general affidavit and the same does not have any specific reference to the concerned workman and the workman was working with the Bank intermittently for several years and he has not mentioned as to the period of engagement of the workman or the number of days he worked for the Bank.

14. It is necessary to mention here that except Shri Siddam and Shri Madheshwar, the other three workmen did not enter into the witness box.

15. On perusal of the record, it is found that neither the union nor the workmen have filed a single document regarding the appointment of the five workmen after their due selection as per Rules of recruitment and that they were appointed against any permanent post.

Taking into consideration the materials on record including the pleadings of the parties and the submissions made by the parties, it is found that the workmen were engaged in the respective branches of the party no. 1 by the respective branch managers on casual basis on daily wages as and when required and they worked intermittently and their engagement was not against any permanent post and their appointment was not in accordance with the Rules of recruitment of party no. 1 of regular sub-staff. It is also found from the materials on record that neither the union nor any of the five workmen has been able to prove that the workmen in fact had worked for 240 days in the preceding 12 calendar months of their respective date of termination, which is necessary to avail the benefits of section 25-F of the Act. As the workmen failed to discharge the burden which was upon them to prove, they are not entitled to the benefits of Section 25-F of the Act.

16. At this juncture, I think it proper to mention about the principles envisaged by the Hon'ble Apex Court in the decisions reported in (2006) 6 SCC 221 (Supra) and AIR 2006 SC · 839 (Supra).

In the decisions reported in (2006) 6 SCC 221 (Supra) the Hon'ble Apex Court have held that :

"Labour law-Daily wager-Disengagement of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post-Hence, his disengagement on acquiring a qualification exceeding the maximum prescribed, held, could not be treated as arbitrary or amounting to wrongful dismissal within the meaning of item 3 of schedule II to Industrial Disputes Act, 1947-High Court erred in holding otherwise-Industrial Disputes Act, 1947, schedule II item 3-Wrongful dismissal-What is not-Post-Right to-Daily wager, held, devoid of such a right.

Labour law-Industrial Disputes Act, 1947-Ss. 25G and 25F-Applicability of Section 25G-Where High Court had not found the workman to have been retrenched within the meaning of S. 25F, held, it erred in holding S. 25G to be applicable.

In the decision reported in AIR 2006 SC-839 (Supra) the Hon'ble Apex Court have held that:

"Retrenchment-Respondent employed as messenger on daily wage basis by bank-No appointment letter issued to him-Termination of his service-Reference was not made regarding validity of retrenchment under S. 25G-But for not considering respondent for reemployment under S. 25 H-Order of reference did not refer to S. 25G but only to S. 25H-Thus finding by Tribunal that order terminating services of respondent was in violation of S. 25G-Illegal-Further respondent in his application under S. 33-C(2) never raised plea that his services were illegally terminated-In circumstances High Court's view that termination of services of respondent was invalid under S. 25H-Not sustainable as S. 25H proceeds on assumption that retrenchment has been validly made.

Industrial Disputes Act (14 of 1947), schedule 3 item 1-Shastry award, para 497-Benefit under-Respondent employed by bank on ad hoc basis-no appointment order was issued-Dispensation of his services-Not in violation of para 497.

Para 497 deals with the right of apprentices and has no application to temporary employees like the respondent. Assuming that there was a violation of the Shastry award by the appellant bank in both cases either in not issuing appointment letters or not maintaining a seniority list, service book in respect of temporary employees etc., this would not mean that therefore the respondents had been properly appointed and their services wrongly terminated. Admittedly no procedure whether in law or under any award or settlement was followed either of the respondents in both appeals. No conditions of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely ad hoc. They had been appointed without considering any rule. It would be ironical if the person who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with."

Judging the case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, it is found that there is no merit in the case of the workman and he is not entitled to any relief. Hence, it is ordered:—

ORDER

The reference is answered in the negative and against the union and the workmen. The workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 29 अगस्त, 2013

का॰आ॰ 2023.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 21/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5/8/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/442/89-आईआर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th August, 2013

S.O. 2023.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/21/1999) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Bank of India and their workman, which was received by the Central Government on 5.8.2013.

[No. L-12012/442/89-IR(B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/21/1999 Date: 22.07.2013.

Party No.1 The Zonal Manager,
Bank of India, S.V. Patel Road,
P.B. No. 4, Nagpur — 440001.

Party No.2 The Joint Secretary,
Bank of India Workers' Organization,
House No. 542, Dr. Munje Marg,
Congress Nagar, Nagpur.

AWARD

(Dated: 22nd July, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman, Shri Namdeo Chirkutrao Tandulkar, to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, for adjudication, as per letter No.L-12012/442/89-D-II (A) dated 19.03.1990, with the following schedule:—

"Whether the action of the management of Bank of India in terminating the services of Shri Namdeo Chirkutrao Tandulkar is justified? If not, to what relief is the workman entitled?"

Subsequently the reference was transferred to this Tribunal for disposal in accordance with law, by the Central Government.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Bank of India Workers' Organization", (''the union'' in short) filed the statement of claim on behalf of the workman, Shri Namdeo Chirkutrao Tendulkar , ('the workman' in short), and the management of Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim by the union is that the workman was appointed in Kalmeswar Branch of the Bank on 08.06.1983 as a Badlee Sepoy in the Sub-staff Cadre and contrary to the various provisions of the bi-partite settlements and awards, governing the service conditions of the employees of Party No. 1, no appointment order was issued to him and from the date of his appointment till his discontinuance, the workman had put in more than 400 days of Badlee employment and he had put in 229 days of employment in a block period of 12 consecutive months and taking into consideration the Sundays and holidays, he had put in 240 days of employment in the preceding 12 calendar months, amounting to one year of continuous service within the meaning of Section 25-B of the Act and although the workman had completed 240 days of employment in 12 calendar months, his claim for permanent employment came to be illegally ignored by Party No. 1 and Party No. 1 on 12.10.1985, directly appointed one Shri Shende as a Sub-staff at Kalmeswar Branch, who had admittedly not worked as a Badlee Sepoy prior to his appointment and even after the appointment of Shri Shende, Party No. 1 continued to engage the workman as a Badlee Sepoy till December 1986, on which date, he was informed that his services have been terminated and that he would not be continued in future and the services of the workman were discontinue, only to deprive permanent status to him and the consequent service benefits and on 10.03.1987, a telegram from the Zonal Office was received in Kalmeswar Branch in which, direction was given to discontinue his services with immediate effect and a bare perusal of the said communication would reveal that the workman was engaged to perform duties of permanent nature and a permanent vacancy did exist at Kalmeswar Branch and the workman could have been absorbed in the said post and the Branch Manager of Kalmeswar Branch terminated the services of the workman without any written order and the sequence of events narrated above would reveal that Party No. 1 adopted unfair labour practice. The further case of the union is that after the discontinuance of the workman from service, the Party No. 1 engaged Shri Bhakte,

Shri Ganarkar, Shri Tapase and Shri Durge from time to time in his place and as the workman had done more than 400 days of work, he had a prior claim to further appointment, which was illegally ignored by Party No.1 and Party No. 1 violated the provision of Section 25-H of the Act. The union has prayed for his reinstatement of the workman in service with continuity, full back wages and consequential benefits.

3. The Party No. 1 in the written statement has pleaded *inter-alia* that the workman was engaged as Badlee Sepoy in the leave vacancy at Kalmeswar branch from time to time and the same was done according to the work available in the said branch, on account of either leave vacancy or temporary increase in the work and the workman put in 86 days, 121 days, and 158 days of work in 1983, 1984 and 1985 respectively and he had not put in 240 days of work within a block period of 12 months and even according to the workman, the maximum number of days worked by him in a block period of 12 consecutive months was 229 days and from about 30th December, 1985, the workman for reason best known to him, stopped reporting and coming to the branch to ask about the availability of work and it had neither terminated the services of the workman nor stopped to offer work to him as and when the same was available, due to taking of leave by the permanent sub-staff or due to temporary increase in work and before the conciliation officer, a clear offer was made by it to the workman to report at Kalmeswar branch for badlee work and that he would be provided work against leave vacancy of permanent sepoy and he would be considered for permanent absorption against permanent vacancy, as and when such vacancy would arise in future, as per his turn and his seniority and eligibility as per Rules and inspite of giving of such offer in writing on 18.08.1989, before the conciliation officer, the workman did not turn up to work as badlee sepoy and it was not obligatory on its part at any point of time to specifically call the workman for work and as the workman had not put in 240 days of work including paid holydays (intervening holidays) within 12 calendar months, he is not entitled to claim the benefits of the provisions of Section 25-F of the Act. It is further pleaded by Party No.1 that the recruitment of Shri Shende, the sub-staff was done after following proper procedure and the communication dated 10.03.1987, if any, is wholly irrevalent as the workman had no connection with the Bank since December, 1985 and there was no unfair labour practice and the engagement of other badlee Sepoy was due to failure of the workman to report for doing the work and the same did not affect his alleged right, as seniority of badlee employees for permanent absorption is counted on the basis of the total days of employment put in by the badlee sepoy, in case of his continuance for duty and there was no violation of the provisions of Section 25-H of the Act and the workman is not entitled to any relief.

4. In support of the claim, the union has examined seven witnesses including the workman, besides placing reliance on the documentary evidence. The witnesses examined by the union are (1) Shri Chandrasekhar Gathibande (the workman himself), (2) Shri Vinayak Joshi, (3) Shri Shirish A. Damle, (4) Shri Arvind M. Tamhaney, (5) Shri Balaji H. Bokde, (6) Shri Rajendra M. Dahikar and (7) Shri Suresh Wirukar.

One Shri Raj Kumar Tulsiram Naik has been examined as the only witness on behalf of the Party No. 1.

5. At the outset, I think it necessary to mention that it is settled beyond doubt by the principles enunciated by the Hon'ble Apex Court in a string of decisions that the Tribunal cannot travel outside the terms of reference and the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental there to.

6. During the course of argument, it was submitted by the union representative that the workman was appointed by the Branch Manager with the consent and approval of the Zonal Manager and he was sponsored by the Employment Exchange and he performed the duties of a full time peon, although he was paid on daily wage basis and he worked continuously from 08.06.1983 to December 1986 and despite the existence of a permanent vacancy, Party No. 1 did not regularize the workman and there was violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act and the Party No. 1 adopted unfair labour practice. It was further submitted by the union representative that Party No. 1 has virtually admitted the allegations made in the statement of claim, in the written statement and from the oral evidence adduced by the union, which has not been challenged seriously in the cross-examination, the documentary evidence produced by the union and the admission of the witnesses examined by the Party No. 1,it can be held that the claim of the workman has been fully proved and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

It was further submitted by the union representative that though the Tribunal passed orders directing the Party No. 1 to produce the relevant documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against Party No. 1 and the reference is to be answered in favour of the workman.

7. Per contra, it was submitted by the representative for the Party No. 1 that the workman was engaged on purely casual basis temporally on 08.06.1983 and his engagement was as and when required basis, due to taking of leave by the permanent Sub-staff or temporary increase of work load in the branch and the workman did not complete 240 days of work in the preceding 12 calendar months of the alleged date of termination and the union has admitted such facts and the evidence on affidavits of the witnesses examined by the union general affidavits and no reliance can be placed

on the same, as no document has been produced by the union or the workman to demonstrate that the workman had worked for 240 days in the preceding 12 months of the alleged date of termination and the workman has failed to discharge the burden of proving that in fact he had worked for 240 days in the preceding 12 months of the date of termination, so the provisions of the Act are not applicable and adverse inference is not to be drawn for non production of the documents and Party No. 1 did not adopt any unfair labour practice and the workman is not entitled to any relief.

In support of the submissions, reliance was placed by Party No. 1 on the decisions reported in AIR 2004 SC — 4791 (M.P. Electricity Board *Vs* Hariram), (2006) 1 SCC — 106 (R.M. Yellatti *Vs* Asstt. Executive Engineer), (2006) 9 SCC — 697 (Krishna Bhagya Jal Nigam Ltd. *Vs* Mohd. Raffi), (2006) 9 SCC — 132 (Surendra Nagar District Paanchayat *Vs* Gangaben), Writ Petition No. 1072/ 2002 of Hon'ble Bombay High Court, Nagpur Bench, (2006) 6 SCC — 221 (Reserve Bank of India *Vs* Gopinath Sharma) and AIR 2006 S.C. — 839 (Regional Manager, SBI *Vs* Rakesh Kumar).

8. First of all, I will take up the submission made by the union representative regarding drawing of adverse inference against the Party No. 1 to produce documents as demanded by the union. Party No. 1 could not able to file the documents. The terms of reference in this case is regarding the legality or otherwise of the termination of the workman from services. On perusal of the materials on record, it is found that Party No. 1 has admitted the engagement of the workman as a badlee sepoy on 08.06.1983 and that he worked on daily wages basis till December, 1985, in the written statement. It is to be mentioned here that in the schedule of reference, the alleged date of termination of the workman from services has not been mentioned. According to the union and the workman, the workman was terminated from service in December, 1986. The date of termination has not been mentioned in the statement of claim. Moreover most of the documents demanded by the union were produced by it during the course of adducing evidence. Neither the union in the statement of claim nor the workman in his evidence on affidavit has pleaded that the workman had in fact put in 240 days of work in the preceding 12 months of the alleged date of termination. In view of the facts mentioned above and the principles enunciated by the Hon'ble Apex Court in the decisions reported in AIR 2004 SC — 4791 (Supra) and (2006) 1 SCC — 106 (Supra) in regard to drawing of adverse inference for non production of documents by a party, it is found that there is no need to draw adverse inference against the Party No. 1 for non production of documents.

9. it is settled beyond doubt by the Hon'ble Apex Court in a number of decisions including the decisions reported in (2006) 1 SCC — 106 (Supra), (2006) 9 SCC — 697 (Supra) and (2006) 9 SCC -132 (Supra) that to avail the benefits of Section 25-F of the Act, it is necessary for the workman to proof that in fact he had worked for 240 days in the preceding 12 months of the alleged date of termination and the burden of proof of such facts lies on the workman.

10. Though the reference has been made by the central Government for adjudication of the legality or otherwise of the termination of the workman, the union, in the guise of raising the dispute on behalf the workman has tried to challenge the policy adopted by the Party No.1 of engaging persons on temporary basis, inspite of having number of permanent vacancies in the cadre of sub-staff at different branches of the Bank. In view of the settled principles that the Tribunal cannot travel beyond the terms of reference as already mentioned above and in view of the fact that such specific terms of reference has not been made by the Government, such claim cannot be adjudicated.

Moreover, from the materials on record including the pleadings of the parties, it is found that the engagement of the workman in this case as Badlee sepoy was not against any permanent vacancy in the branch, but his engagement was on temporary basis as a daily wager, as and when required basis against leave vacancy of the permanent sub-staff or due to temporary increase of workload in the branch.

At this juncture, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in (2006) 6 SCC-221 (supra). The Hon'ble Apex Court have held that:—

"Labour Law-Daily wager-Disengagement of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held had no right to post."

11. At this juncture, I also think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in a catena of decisions including the decision reported in AIR 2006 SC-1806 (Secretary, State of Karnatak *Vs.* Umadevi & others)(Constitutional Bench).

It is settled beyond doubt by the Hon'ble Apex Court that:—

"Rules of recruitment cannot be relaxed and the court/Tribunal cannot direct regularisation of temporary appointees de hors of rules-State owned/operated corporations-Appointment Modes of appointment — Held regularization cannot be a mode of appointment- Public Sector- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment- Labour Law- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment-Regularization- Held, not a permissible mode of appointment."

It is also settled by the Hon'ble Apex Court that:

"The term 'temporary employee' is a general category which has under it several sub-categories *e.g.* casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the state or its instrumentalities employee persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court cannot direct continuation in service of a non-regular appointee. Even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is one that would enable the jettisoning of the procedure establish by law for public employment."

It is also settled by the Hon'ble Apex Court that:—

"Employment on daily wage — Confers no right of permanent employment-- Daily wager appointed on less than minimum wages — Not forced labour — Continued on post for long period — Daily wagers from a class by themselves — They cannot claim parity vis-a-vis those regularly recruited on basis of relevant rules and cannot be made permanent in employment.

Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who were working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming the equal wages for equal work. There is no fundamental right in those who have been employed in daily wages or temporally or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since, a regular appointment to be made only by making appointments consistent with the requirements of articles 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages, cannot be extended to a claim for equally treatment with those who were regularly employed. That would be treating unequal as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules."

Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

12. On perusal of the materials on record including the pleading of the parties and taking into consideration the submissions made during the course of argument by both the parties, it is found that the workman was engaged by Party No. 1 on 08.06.1983 on casual basis on daily wages as a badlee sepoy and he worked intermittently as and when required basis in four different branches of Party No. 1 including Kalmeswar Branch. It is also found that the engagement of the workman was not according to the Rules of Recruitment of Sub-Staff of Party No. 1 against any permanent post. Though the workman and two other witnesses, namely, Balaji H. Bokade and Suresh Wirurkar have stated that the workman faced the interview and was selected for appointment, no reliance can be placed on their evidence, in absence of any such pleadings in the statement of claim. The discrepancies in the evidence of the witnesses as to the person, who had taken the interview of the workman, make their evidence more unreliable. According to Shri Suresh Wirurkar, the workman was interviewed by Shri Chandrakant Joshi, the Asstt. Manager of Kalmeswar Branch, whereas, according to the workman, one Shri Dharvekar took his interview. It is to be mentioned here that the workman has admitted in his cross-examination that the Bank did not issue any call letter for the interview and order of appointment was not given to him and he was working on daily wages basis in different branches of the Bank, where ever works were available. Likewise, witness, Shri Suresh Wirurkar in his cross-examination, has stated that the workman was engaged on daily wages and he was being sent to different branches, where works were available and the appointment of Shri V.S. Shende was done in accordance with the Rules of Recruitment of Sub-Staff in the Bank.

The workman has not filed a single document regarding his appointment against any permanent post.

So far the evidence of Shri Vinayak Joshi, Shri Shirish Anandrao Damle, Shri Arvind M. Tamhaney and Shri Rajendra M. Dahikar is concerned, the same is very general in nature and most part of their evidence is regarding the availability of vacancies in the Sub-Staff Cadre in different branches of the Bank of Party No. 1 and in respect of the policy adopted by Party No. 1 regarding engagement of badlee sepoy/peon instead of filling up the posts by making regular recruitment, which is not the subject matter of adjudication in this reference, as already mentioned above.

Shri Joshi in his examination-in-chief without mentioning the name of the workman has generally mentioned that every workman covered by the reference has completed 240 days in a consecutive 12 months period. Shri Joshi has not stated that the workman in fact had worked for 240 days in the preceding 12 months of the date of termination. Nothing has also been mentioned by Shri Joshi about the period during which every workman involved in the reference completed 240 days in a consecutive 12 months period. In his cross-examination, Shri Joshi has stated that the method of recruitment of sub-staff is to call for the names from the Employment Exchange and after interview, to select suitable candidates for permanent, temporary, full time and part time employees and in small branches having only one sub-staff, temporary arrangements have to be made by the Branch Manager with consultation with administrative office, which the said sub-staff proceeds on leave or sick and as per the document, Ext. W-10, Bank is allowing to appoint sub-staff/sepoy on casual basis in small branches.

Shri Damle, in his cross-examination has stated that the Bank has authorized the manager to engage casual employees.

The evidence of Shri Arvind M. Tamhaney in his examination-in-chief itself is contradictory to the stand taken by the union and the workman in the statement of claim. According to the union the workman worked continuously from 18.04.1983 to 25.02.1985 without a single day break, where is in paragraph 24 of his affidavit, Shri Tamhaney has mentioned that," In the instant case, the concerned employee was given illegal break in service by management on many occasion without any reason and with malafide intention."

More over, in his cross-examination, Shri Tamhaney has admitted his affidavit is a general affidavit and the same does not have any specific reference to the concerned workman and the workman was working with the Bank intermittently for several years and he has not mentioned as to the period of engagement of the workman or the number of days he worked for the Bank.

Shri Suresh N. Panwilkar has been examined to show that the workman worked continuously at Nawegaon Branch from the date of the opening of the Branch. On perusal of the evidence of Shri Panwilkar, it is found that his evidence in the examination-in-chief itself is not consistent with the stands taken by the union in the reference. According to the case of the union and workman, the workman was appointed on 18.04.1983 and Shri Bajanghate was junior to him and Shri Bajanghate was retained and regularized by the Bank, where as the evidence of Shri Panwilkar is that the Branch of Nawegaon Khairi was opened on 31.03.1983 and the workman and Shri Bajanghate were appointed from the beginning of the Bank and the workman was discontinued after two years and Shri Bajanghate was removed earlier to the workman.

In view of the own admission of the workman as already mentioned above and the evidence on record, it is clear that the workman worked intermittently as a casual daily wager in different branches as and when required. The workman has failed to plead and prove that he had in fact worked for 240 days in the preceding 12 months of the alleged date of his termination, so, he is not entitled to the benefits of Section 25-F of the Act and there was no need for the Party No. 1 to comply with the provisions of Section 25-F of the Act.

13. At this juncture, I think it proper to mention about the principles envisaged by the Hon'ble Apex Court in the decisions reported in (2006) 6 SCC 221 (Supra) and AIR 2006 SC — 839 (Supra).

In the decisions reported in (2006) 6 SCC 221 (Supra) the Hon'ble Apex Court have held that:

"Labour law — Daily wager — Disengagement of — Validity — Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post — Hence, his disengagement on acquiring a qualification exceeding the maximum prescribed, held, could not be treated as arbitrary or amounting to wrongful dismissal within the meaning of item 3 of schedule II to Industrial Disputes Act, 1947 — High Court erred in holding otherwise — Industrial Disputes Act, 1947, schedule II item 3 — Wrongful dismissal — What is not — Post — Right to — Daily wager, held, devoid of such a right.

Labour law — Industrial Disputes Act, 1947 — Ss. 25G and 25F- Applicability of Section 25G — Where High Court had not found the workman to have been retrenched within the meaning of S. 25F, held, it erred in holding S. 25G to be applicable.

In the decision reported in AIR 2006 SC — 839 (Supra) the Hon'ble Apex Court have held that:

"Retrenchment — Respondent employed as messenger on daily wage basis by bank — No appointment letter issued to him — Termination of his service — Reference was not made regarding validity of retrenchment under S. 25G — But for not considering respondent for reemployment under S. 25H — Order of reference did not refer to S. 25G but only to S. 25H — Thus finding by Tribunal that order terminating services of respondent was in violation of S. 25G — Illegal — Further respondent in his application under S. 33-C(2) never raised plea that his services were illegally terminated — In circumstances High Court's view that termination of services of respondent was invalid under S. 25H — Not sustainable as S. 25H proceedes on assumption that retrenchment has been validly made.

Industrial Disputes Act (14 of 1947), schedule 3 item 1 — Shastry award, para 497 — Benefit under —

Respondent employed by bank on ad hoc basis — no appointment order was issued — Dispensation of his services — Not in violation of para 497.

Para 497 deals with the right of apprentices and has no application to temporary employees like the respondent. Assuming that there was a violation of the Shastry award by the appellant bank in both cases either in not issuing appointment letters or not maintaining a seniority list, service book in respect of temporary employees etc., this would not mean that therefore the respondents had been properly appointed and their services wrongly terminated. Admittedly no procedure whether in law or under any award or settlement was followed either of the respondents in both appeals. No conditions of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely ad hoc. They had been appointed without considering any rule. It would be ironical if the person who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with."

Judging the case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, it is found that there is no merit in the case of the workman and he is not entitled to any relief. Hence, it is ordered:—

ORDER

The action of the management of Bank of India in terminating the services of Shri Namdeo Chirkutrao Tandulkar is justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2024.—औघोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्व नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 272/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/192/2003-आईआर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2024.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 272/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/192/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/272/2003 Date: 24.07.2013.

Party No.1(a) The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No.1(b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai - 400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar Ward No. 2, Near Boudha Vihar, Post: Wardha, Distt. Wardha (M.S.)

AWARD

Dated: 24th July, 2013

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Prabhakar Shankar Nikore, for adjudication, as per letter No. L-22012/192/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Prabhakar Shankar Nikore, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Prabhakar Shankar Nikore, (''the workman'' in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 23.12.1993 and he was initially engaged

through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period for two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary Party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 23.12.1993 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and

the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that FCI had not issued advertisement and the contractor informed them about the vacancy in FCI and the contractor took them to FCI and the management of FCI did not issue any order to them and he does not know if he was appointed by Singh Security Services and they have not filed any document showing payment by FCI and he has no document to show that he was terminated by FCI and it is correctly mentioned in his statement of claim that he was appointed through contractor.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No.1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. The evidence of the witness for the management has remained unchallenged, as none appeared from the side of the workman to cross-examine him.

6. It is necessary to mention here that as none appeared on behalf of the workman to make argument on 20.06.2013, the date on which the reference was fixed for argument, order was passed to proceed with the case ex-parte against the workman.

7. At the time argument, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur

Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> XX XX XX XX

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s. Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda Others *Vs*. Steel Authority of India and Others).

In the decision reported in 1985-11 LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... " 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of

his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the Definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Born) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that:—

> With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.
>
> From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official

gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings

owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to, any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2025.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 38/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/92/2008-आईआर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2025.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2008) of the Central Government Industrial Tribunal/Labour-cum- Court, NAGPUR as shown in the Annexure in the Industrial Dispute between the management of WCL and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/92/2008-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/38/2008 Date: 29.07.2013.

Party No.1 The Chief General Manager, Chandrapur Area of WCL, Post & Distt. Chandrapur, Maharashtra.

Party No.2 : Shri Shriram M. Niranjane Through President, Lal Zanda Coal Mines Mazdoor Union (CITU), Qr. No. M-305, Shakti Nagar Colony, Po. Durgapur, Distt. Chandrapur. (MS)

AWARD

(Dated: 29th July, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Maroti Niranjane, for adjudication, as per letter No.L-22012/92/2008-IR (C-II) dated 10.11.2008, with the following schedule:—

> "Whether the action of the management of Chandrapur Area of M/s. WCL in dismissing Shri Sriram Maroti Niranjane, Sr. Clerk w.e.f. 21.05.2007 is legal and justified? To what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Shriram Niranjane, ("the workman" in short) through his union, "Lal Zanda Coal Mines Mazdoor Union (CITU)" ("the union" in short) filed the statement of claim and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that the Party No.1 is a public sector

undertaking and he was a permanent employee of party No.1 and he was appointed as a Badli Loader on 10.04.1982 and in 1984, he was promoted as a General Mazdoor category I and in 1987, he was promoted as a senior clerk and continued in the said post and his service record was clean and unblemished and in his entire service career, no charge sheet or show cause notice was ever served on him and he had all along been helping his colleagues in need, in his humble way, although he himself was not financially very well of and in the month of April, 2004, One Ramesh Nanaji Belekar, who was working as a Haulage Khalasi and was known to him for the last eight years approached him (workman) to lend him Rs. 5000/- to meet his urgent needs with the promise to return the same within a short period and he gave a loan of Rs. 5000/- to meet his urgent needs and promised to return the same within a short period and he gave a loan of Rs. 5000/- to shri Belekar with the condition that the said amount should be refunded within a specified time and immediately thereafter, Shri Belekar applied for voluntary retirement from service, which came to be effected from July, 2004 and shri Belekar received most of his legal dues from the management during the months of September and October 2004 and in the meantime, shri Belekar paid a sum of Rs. 1500/- to him, but he was reluctant to return the rest amount of Rs. 3500/- and therefore, he contacted shri Belekar and asked him to pay back the said amount and shri Belekar initially dodged him, whenever he tried to meet shri Belekar, but finally, shri Belekar intimated him to come to his house (Shri Belekar's house) at about 9.30 AM on 03.11.2004 to receive the money and accordingly, he went to the house of shri Belekar at about 9.30 AM on 03.11.2004 to receive the money and as soon as he received the money from shri Belekar, CBI pounced on him and arrested him on the charge of taking bribe from shri Belekar and he was produced before the designated court on 03.11.2004 itself and was released on bail on the same day and on 24.12.2004, charge sheet was filed against him by the CBI before the court of Special Judge, Chandrapur in Regular case No. 20/2004 and the matter is subjudiced before the Designated court.

The further case of the workman is that the Party No.1 also issued a charge sheet-cum suspension order against him on 26.12.2004, relating to the same charges as mentioned in the charge sheet filed by the C.B.I. before the special judge, Chandrapur and he submitted his reply to the said charge sheet and thereafter, a departmental enquiry was started and a mere perusal of the proceedings of the enquiry would show that the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common and he was constrained to participate in the enquiry at the cost of causing prejudice to his case pending before the designated court and the findings of the enquiry officer are based on extraneous consideration and not based on facts and it was clearly demonstrated by him and his defence representative from the evidence adduced in the enquiry that the money received by him from shri Belekar was not a bribe, but the refund of the money taken by shri Belekar from him as a loan and the alleged offence of taking bribe by him was not at all proved in the enquiry and the enquiry officer totally failed to apply his judicious mind and mechanically drew the conclusion that he (workman) was guilty of accepting bribe and on the basis of the enquiry report, the disciplinary authority issued the impugned order of dismissal in a huff w.e.f. 21.05.2007 against him and the order of dismissal is wholly illegal, unfair and arbitrary and due to such illegal dismissal, he has come to the street and he is without any job and he is passing his days with utmost poverty and desperation.

The workman has prayed for his reinstatement in service with continuity, full back wages and all consequential benefits.

3. The Party No.1 in their written statement have pleaded that the order dated 10.12.2008 of the Central Government reveals that the present industrial dispute is between the Party No.1 and the union, but the statement of claim has been filed by the workman instead of the union and as such, the statement of claim is not valid and the reference is not maintainable for want of necessary party i.e. the union.

The further case of Party No.1 is that the punishment of dismissal dated 21.05.2007 was imposed against the workman in accordance with the service conditions prescribed in certified standing orders and prior to inflicting the punishment of dismissal, regular departmental enquiry was conducted on the charges levelled against him and a trap of CBI was materialized against the workman and he was caught red handed while accepting the bribe and a regular criminal case was initiated against him in the court of Special Judge, Chandrapur and in view of the same, they decided to suspend the workman pending investigation and served a charge sheet against him and the workman replied to the charge sheet denying the charges and therefore, a regular departmental enquiry was conducted against him and the workman attended the enquiry with his co-worker, Shri Baig and their witnesses were examined in presence of the workman and full opportunity was given to the workman to cross-examine the witnesses and opportunity was also given to the workman to adduce evidence in his defence and the workman examined four witnesses besides himself and the defence witnesses were cross- examined by the management representative and the enquiry officer submitted his report declaring the charges to have been proved against the workman and a second show cause notice alongwith the copy of the report of the enquiry officer was served on the workman and the workman submitted his written say to the same and after completing the exercise as required under the law and

procedure of departmental enquiry and taking the approval of the competent authority, the punishment was imposed against the workman and no appeal was preferred by the workman against the punishment, even though there is provision for the same in the certified standing orders and every opportunity was offered to the workman to defend himself in the departmental enquiry and the principles of natural justice were followed without any breach and the enquiry is fair and valid and the conclusions drawn by the enquiry officer are based on the evidence recorded during the course of the enquiry and the findings of the enquiry officer are not based on any extraneous consideration and the findings have been derived with due reasoning and the charges levelled against the workman were very serious in nature and in view of the gravity of the misconduct, the punishment of dismissal from service was imposed and the punishment was squarely commensurate with the gravity of the misconduct and the same was legal and justified and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after conducting of a departmental enquiry, the validity or otherwise of the departmental enquiry has been taken for consideration as a preliminary issue and by order dated 10.04.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the enquiry conducted against the workman is totally vitiated in law, because the enquiry against the workman was conducted by the Personal Manager, who had initiated the departmental enquiry against the workman and the enquiry officer did not permit a family member of the workman, who was the sole eye witness in the matter to give evidence as a defence witness and there was denial of reasonable opportunity to the workman in breach of principles of natural justice. It was further contended by the learned advocate for the workman that the findings of the enquiry officer are based on extraneous consideration and not based on facts and the enquiry officer totally failed to apply his judicious mind and mechanically drawn his conclusion holding the workman guilty of accepting bribe and the punishment of dismissal is grossly disproportionate to the quantum of offence, considering the fact that the service record of the workman was absolutely unblemished and as such, the order of dismissal is wholly illegal, unfair and arbitrary and the reference is to be answered in favour of the workman.

6. Per contra, it was submitted by the learned advocate for the Party No.1 that by order dated 10.04.2013, the preliminary issue regarding the validity of the departmental enquiry has already been declared as valid and legal and nothing has been demonstrated in this case as to how the findings of the enquiry officer can be termed as perverse and the enquiry officer has given his findings only on the basis of the evidence recorded during the course of the departmental enquiry and there is no perversity in the findings recorded by the enquiry officer and the charges proved against the workman are serious in nature and the punishment awarded is also as per the standing order and no sympathy can be shown much less demanded in this case and the punishment of dismissal from services imposed against the workman is justified and legal and the workman is not entitled to any relief.

7. The first contention raised by the learned advocate for the workman is that the enquiry conducted against the workman is totally vitiated as the enquiry was conducted by the Personal Manager, who himself initiated the departmental enquiry against the workman. However, after going through the documents of the departmental enquiry conducted against the workman, I find no force in the same, as because the charge sheet was submitted against the workman by the Suptd./Manager of the mines, Durgapur Rayatwari Colliery, whereas Shri P.D. Kawle, the then Personal Manager (Per.), Chandrapur was appointed as the enquiry officer at first and on his transfer, Shri D. Ramdeva Rao, Personal Manager (IR), Chandrapur was appointed as the enquiry officer and Shri D. Ramdeva Rao completed the enquiry and submitted the enquiry report to the Suptd. of Mines/Manager, Durgapur Rayatwari Colliery. So, the submission made by the learned advocate for the workman in this respect fails.

8. So far the contention raised by the learned advocate for the workman regarding the enquiry officer not allowing the workman to examine his family member as a defence witness is concerned, it is to be mentioned that the said contention was raised and decided at the time of deciding the issue of the validity of the departmental enquiry. So, there is no scope to consider the said submission again.

9. Before delving in to the merit of the matters, it is to be mentioned here that it is well settled by the Hon'ble Apex Court in a series of decisions that the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction and the Tribunal cannot interfere with the findings of the enquiry officer or the competent authority where they are not arbitrary or utterly perverse and if there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority and if the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

Keeping in view the above settled principles, now, the case in hand is to be considered.

After perusing the material on record including the papers of the departmental enquiry and taking into

consideration the submissions made by the learned advocates for the parties, it is found that the enquiry officer has arrived at the conclusions by analyzing the evidence adduced in the departmental proceeding systematically and so also in a rational manner. The findings of the enquiry officer are based on the materials on record of the enquiry proceedings and not on any extraneous consideration. It is also found that this is not a case of no evidence or that the findings of the enquiry officer are based on no evidence. The findings of the enquiry officer are not as such, which could not have been reached by a prudent man on the materials available on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

10. So, for the proportionality of the punishment is concerned, it is found that serious and grave misconduct of taking bribe has been proved against the workman in a properly conducted departmental enquiry and therefore there is no question of consideration of the past record of the workman. The punishment of dismissal from services imposed against the workman cannot be said to be shockingly disproportionate to the serious misconduct proved against the workman. Hence, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:—

ORDER

The action of the management of Chandrapur Area of M/s. WCL in dismissing Shri Sriram Maroti Niranjane, Sr. Clerk *w.e.f.* 21.05.2007 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2026.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 33/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/167/2003-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2026.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2006) of the Cent. Govt. Indus. Tribunal-cum Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/167/2003-IR (CM-II)]

B. M. PATNAIK, Presiding Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/33/2006 Date: 03.05.2013

Party No. 1(a) : The Sub Area Manager, WCL Murpar Project of (Umrer Area) of WCL, Post: Khadsanghi, Tah-Chimur, Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons, WCL Contractor, Singhnagar, Dahegaon, Chhindwara Road, Distt. Nagpur(MS)

Versus

Party No. 2 : Shri Mohan S/o Sh. Tukaram Deshmukh R/o. Minzhari, Post: Khadsanghi, Teh.-Chimur, Distt. Chandrapur Maharashtra.

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Mohan Tukaram Deshmukh, for adjudication, as per letter No. L-22012/167/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Mohan S/o Tukaram Deshmukh is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mohan Tukaram Deshmukh, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No.1 (a) i.e. Sub-Area Manager, Murpar Project and Party No.1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No.1(a) also engaged Party No.1(b), M/s. Singh & Sons in its work *w.e.f.* 05.01.1997 and till Party No.1(b) is working with Party No.1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L as a General Mazdoor on 28.12.1992 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No.1(b) *w.e.f.* 01.05.1997 continuously till 28.12.2001 and Party No.1(a), sent him for vocational training from time to time and he had undergone the said training successfully and as such, he is a workman/ employee of Party No.1(a) and Party No.1(a) is the principal employer and his appointment by both the contractors was oral and the Party No.1(b) terminated his services orally *w.e.f.* 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no. 1(a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with Parties No 1(a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with Party No.1(a), and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the Party No.1(a), and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as Party No.1 was the principal employer and Party No.1(b) was the contractor of Party No.1(a), for each and every act of the Party No.1(b), the Party No.1(a), is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No.1(a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No.1(b), neither appeared in the case nor contested the claim.

In its written statement, the Party No.1(a) has pleaded *inter-alia* that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of in a clines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within period of 3 1/2months and the incline shaft drivage within eight months and it also awarded another contract to Party No.1(b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No.1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it [Party No.1(a)] was related to Party No.1(b), only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the Party No.1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appinted by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No.1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka *Vs*. Umadevi, Union Public Service Commission *Vs*. Girish Jayanti [2006(2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No.1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No.1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its

employment and as such, there was no question of compliance of the principles of section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by Party No. 1 (a) and BGML engaged him from 28.12.1992 to 02.07.1996 as a General Mazdoor and that he was again engaged by Party No.1 (b), another contractor from 01.05.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No. 1 (a). The only claim of the workman is that Party No. 1 (a) had sent him for vocational training and he had undergone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No. 1(a), as because, he was sent for vocational training by Party No. 1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No. 1(a) and he was employed by the contractors and the Party No. 1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No. 1 (b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery *Vs.* Their workmen) have held that:-

> "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended C1. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal *Vs.* M/s. Bharat Electronics Ltd.), the Hon'ble

Apex Court have held that,

> "Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)—Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).
>
> Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, *i.e.* the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay *Vs.* Rajeev Kumar) has held that:

> "Industrial Disputes Act (14 of 1947- S.25-F, 10-Retrenchment compensation-Termination of services without payment of—Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management—Onus lies upon workman to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2027.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 34/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/168/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2027.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 34/2006 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/168/2003-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/34/2006 Date: 03.05.2013

Party No. 1(a) : The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons,
WCL Contractor, Singhnagar, Dahegaon,
Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No. 2 : Shri Dnyaneshwar S/o Sh. Pandurang Nannaware, R/o, Minzhari, Post: Khadsangi, Teh.-Chimur, Distt. Chandrapur, Maharashtra.

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Dnyaneshwar Pandurang Nannaware, for adjudication, as per letter No. L-22012/168/2003-IR (CM-II) dated 21.03.2006, with the following Schedule:—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Dnyaneshwar S/o Pandurang Nannaware is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Dnyaneshwar Pandurang Nannaware, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No. 1 (a) *i.e.* Sub-Area Manager, Murpar Project and Party No. 1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L.". in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No. 1(a) also engaged Party No. 1 (b), M/s. Singh & Sons in its work *w.e.f.* 05.01.1997 and till Party No. 1 (b) is working with Party No. 1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L as a General Mazdoor on 17.07.1993 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No. 1 (b) *w.e.f.* 01.07.1997 continuously till 28.12.2001 and Party No. 1 (a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/ employee of Party No. 1 (a) and Party No. 1 (a) is the principal employer and his appointment by both the contractors was oral and the Party No. 1 (b) terminated his services orally *w.e.f.* 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no. 1(a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with Party No. 1 (a) and (b) they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1 (a) and 1 (b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the Parties No. 1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as Party No. 1 was the principal employer and Party No. 1 (b) was the contractor of Party No. 1 (a), for each and every act of the Party No. 1 (b), the Party No. 1(a) was responsible and as such, the Party No. 1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No. 1 (a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded inter-alia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3 1/2 months and the incline shaft drivage within eight months and it also awarded another contract to Party No.1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No. 1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it (Party No.1(a)) was related to Party No.1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their

need. It is further pleaded by the Party No.1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No.1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti (2006 (2) SCALE 115) and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No.1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No.1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of sections 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by Party No.1 (a) and BGML engaged him from 17.07.1993 to 02.07.1996 as a General Mazdoor and that he was again engaged by Party No.1 (b), another contractor from 01.07.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No.1 (a). The only claim of the workman is that Party No.1 (a) had sent him for vocational training and he had under gone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No.1(a), as because, he was sent for vocational training by Party No. 1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No.1(a) and he was employed by the contractors and the Party No.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No.1 (b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:—

> "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal *Vs.* M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

> "Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)—Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).
>
> Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, *i.e.* the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Honble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay *Vs.* Rajeev Kumar) has held that:

> "Industrial Disputes Act (14 of 1947- S.25-F, 10-Retrenchment compensation—Termination of services without payment of -Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management—Onus lies upon workman to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2028.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 39/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/41/2009-आईआर (सी एम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2028.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 39/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Wani Area of WCL, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/41/2009-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/39/2009 Date 31.05.2013.

Party No. 1 : The Chief General Manager,
Wani Area of WCL, AT & PO: Urjanagar,
Chandrapur (MS).

Party No. 2 : The Secretary,
Sanyukt Koyla Mazdoor Sangh
(AITUC),
At: Sanyal Bhawan, Gandhi Nagar,
PO : Ghugus, Chandrapur (MS).

AWARD

(Dated: 31st May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Surendra Kalwal, for adjudication, as per letter No. L-22012/41/2009-IR (CM-II) dated 11.11.2009, with the following schedule:—

> "Whether the demand of Sanyukt Koyala Mazdoor Sangh, (SKMS) for regularization of Shri Surendra Kalwal in the post of Clerk is legal and justified? To what relief is the claimant entitled for?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Sanyukt Koyala Madzoor Sangh", ("the union" in short) filed the statement of claim on behalf of the workman, Shri Surendra Kalwal, ("the workman" in short) and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of the workman as pleaded by the union in the statement of claim is that it is a registered union under the Trade Unions Act, 1926 and is affiliated to AITUC and Party No. 1 is a Government Coal Company, owned and controlled by the Central Government and is a state within the meaning of Article-12 of the Constitution of India and the workman passes SSC examination in 1982 and he was appointed as General Mazdoor (daily rated) grade-I and he was given service linked upgradation twice as per the provisions of National Coal Wage Agreements ("the NCWA" in Short) to daily rated category-II and category-III and being transferred from Durgapur Rayatwari Colliery of Chandrapur, he joined Mungoli open caste project in January, 1998 and the Party No. 1 posted him against the permanent vacancy of the post of "Tripman", a clerical grade-III post on from 09.01.1988 and since then, he is continuing in the same post, but he is being paid the wages of daily wages category-III, instead of clerical grade-III and during the meeting held with the representatives of the union, R.K.K.M.S. (INTUC) on 03.03.2000 and 06.03.2000 at Director (Personnel) level and on 07.03.2000 at CMD level, Party No. 1 had agreed to regularize all the eligible daily rated employees, who were engaged in clerical job, prior to 25.08.1998 as clerk grade III and the minutes of the said meeting was circulated *vide* circular no. 17/1037 dated 17.04.2000 and the minutes of the meeting was quite contrary to the provision of clauses 3.5. and 3.6 of the Certified Standing Order, Mines Act and Rules made thereunder, the Act and Rules made thereunder and the principles laid down by the Hon'ble Apex Court for continuous service of one year and regularization etc. and it is well settled by the Hon'ble Apex Court that the terms of employment specified in the Standing Order would prevail over the corresponding contract of service.

The further case of the union as presented on behalf of the workman is that the management of Wani Area sent a list of 15 workers to the headquarters of WCL, Nagpur including the name of the workman at Serial No. 15, for regularization as clerk grade-III and in the said list, the name of Shri Vijay Anand Katakar, trainee (maintenance) cat.-II, who was transferred and placed in clerical job *w.e.f.* 01.10.1988 was included at Serial No. 14, contrary to the direction contained in the minutes of discussion with R.K.K.M.S., where in the cutoff date was 25.08.1998 and the same was done only to favour the members belonging to the particular union and though there were lesser number of clerks than the sanctioned manpower, as approved by the Functional Director and four and nine workers, out of the list of 15 workers were regularized by Party No. 1 notionally *w.e.f.* 01.01.1999, with financial benefit from 01.01.2000, as per letter dated 03.11.2000 and 22.09.2004 respectively, but the Party No. 1 did not regularize Shri Vijay Anand Kaharkar and the workman as clerk grade-III, on the grounds that Shri Vijay was diverted from 01.10.1998 i.e. after the date of embargo (25-08-1998) and the workman could no put 240 days of attendance either in the year 1998 or 1999 and PartyNo. 1 regularize the services

of Shri Vijay and three others as clerk grade-III with immediate effect as per letter dated 29.03.2004 followed by letter dated 12.01.2005 and from such facts, it is clear that Party No. 1 showed favoritism towards certain union and the workman was not regularized, even though, he was placed as Tripman in clerical grade-III *w.e.f.* 08.01.1998, much before the date of embargo *i.e.* 28.08.1998 and though the workman made several representations including the representations in the year 2003 and 2004 for his regularization after completion of the required attendance, his case was not considered and the Personnel Manager, Mungoli sub-area submitted the detailed particulars of attendance of the workman to Dy. Chief Personnel Manager, Wani Area vide note sheet dated 08/09.01.2007 through the proper channel and the attendance of the workman in the calendar year 2001 was 241 days and in the year 2004 and 2005 was 241 days and 286 days respectively and as such, the workman is entitled for regularization *w.e.f.* 2001 notionally and to get financial benefit from 01.01.2002 in clerical grade-III and other consequential benefits and the workman is entitled for regularization in clerical grade-III *w.e.f.* 08.07.1998, in terms of certified standing order or from 08.01.1999, after expiry of one year from the date of his deployment.

3. The Party No. 1 in the written statement has pleaded *inter-alia* that the case filed on behalf of the workman is false, fabricated, frivolous and not maintainable in the eye of law and is liable to be rejected and the workman has suppressed the material facts and tried to mislead the Tribunal and he has not approached the Tribunal with clean hands and on that count, the reference is to be answered in the negative. It is further pleaded by the Party No. 1 that the workman was appointed as a Badli worker on 28.01.1985 at Durgapur Rayatwari Colliery, Chandrapur Area and he was regularized as General Mazdoor-Cat-I *w.e.f.* 01.06.1986 and he was transferred to Wani are and posted at Mungoli Sub-Area on 07.01.1998 and the workman was being occasionally deployed as and when required basis, as Tripman and in the year 2001, vide letter dated 08.06.2001, decision regarding regularization of daily/time rated employees, who were being deployed to do clerical nature of work, in the post of clerical grade-III, mentioning the criteria fixed for assessing eligibility for regularization in the post of clerical grade-III was communicated by G.M. (IR) and the said letter was issued as per the meeting held with RKKMS union on 3rd, 6the and 7th March, 2000, for regularizing daily rated employees, who were doing the duty of clerk prior to 25.08.1998 and as per the said decision, all the eligible daily rated employees had to fulfill two conditions for regularization in clerical grade and the conditions are that the eligible workman must have been engaged in clerical job prior to 25.08.1998 and he must have put in 240 days in the preceding calendar year (*i.e.* 1999 as the decision was taken in the year, 2000) and the workman had not completed 240 days attendance in the calendar year 1999, as required by the condition for regularization in clerical grade-III and he had put in only 193 days of work in 1999 and as such, he was not eligible for regularization in clerical grade-III and as per the said decided norm of reuglarisation of daily/time rated employees in clerical grade, the employees, who fulfilled the conditions were regularized and this procedure of regularization continued till the year 2004 for Wani Area and the workman was not paid the wages of clerical grade-III he was not regularized in the said post and the minutes of the meeting is not contrary to the provisions of certified standing order or the Act and Rules made thereunder or the Mining Act and rules made thereunder the workmen, who were found to be eligible as per conditions decided for regularisation in clerical grade-III were regularized irrespective of their union membership and when such regularisation has already been completely banned, it is not open for the union at this belated stage to say that the minutes of the meeting is contrary to the certified standing order and other laws. It is further pleaded by Party No. 1 that they had never shown any favour to any particular union and so far regularization of Shri Vijay Anand Katarkar is concerned, the same was done as per the norms of regularization, as it was subsequently found that he was deployed as clerk in central workshop, Tadali from 01.07.1998 and subsequently, he was transferred to Wani area, where he continued to be deployed as clerk from 01.10.1998 and he had more than the minimum required attendance of 240 days in 1999 and the workman was never victimized and the workman is not entitled to any relief.

4. In the rejoinder, the union has reiterated the facts mentioned in the statement of claim. It has further pleaded that the Hon'ble Apex Court in a number of decision have held that 240 days of work includes the days of sick leave and authorized leave etc. and according to the Party No. 1, the practice of regularization continued till 2004 for Wani Area and as the workman put in 241 days of attendance in the year 2001, which was much prior to 2004, he is entitled for regularization.

5. Besides placing reliance on documentary evidence, the union has examined two witnesses, namely, Shri Narendra Chanderya Nune and Shri Surendra Kalbal (the workman) in support of its case. No oral evidence has been adduced on behalf of the management.

Both the witnesses examined by the union have reiterated the facts mentioned in the statement of claim and rejoinder, in their evidence on affidavit.

6. Perused the materials on record including the pleadings of the parties and the documents filed by them. In view of the pleadings of the parties and the documentary evidence, I find that there is no necessity to analyze the oral evidence adduced by the union.

7. It is not disputed by Party No. 1 about issuance of the letter regarding "Promotion Avenue of daily rated workers regularized as clerk" and that on the basis of such letter, the name of the workman along with 14 others were submitted for consideration for regularisation as clerk grade-III and that out of the list of 15 employees, except the workman, the other 14 employees were regularized in different batches as clerk grade-III and besides them, some other daily rated workers deployed to do the work of clerk grade-III were also regularized upto the year 2004. The case of the Party No. 1 in not regularizing the workman is that he did not fulfill the condition of working 240 days in the preceding year, i.e. 1999.

8. On perusal of the record, it is found that the workman himself has pleaded that he worked for 193 days in the year 1999. The workman has no where pleaded that he had worked for 240 days in the year including sick leave and authorized holiday. In absence of such pleadings, the submission that the days of sick leave and authorized holiday should be taken into consideration at the time of calculating 240 working days in a year, is of no avail to the case of the workman.

9. The case of the workman is not a case of treating him as a permanent employee after working for 240 days in a year or that he was employed to work as a clerk on probationer and as such, the submissions made by the learned advocate for the union in that regards cannot be entertained.

10. The union has tried to blow hot and cold in the same breathe. The union though has claimed the benefit for the workman basing on the letter for regularisation of daily rated workman as clerk grade-III, it has challenged the said letter stating that the same is against the certified standing order and other laws. Hence, the contention raised in that regard by the union fails.

11. On perusal of the evidence on record, it is found that the workman completed 241 days of work in 2001. The Party No. 1 pleaded in the written statement that the procedure of regularization in clerk grade-III continued till 2004. It is also found that Party No. 1 had given notional fixation to different employees on different dates i.e. to four employees *w.e.f.* 01.01.1998 as per Ext. W-III, to four employees *w.e.f.* 01.01.1999 and five employees *w.e.f.* 01.01.2000 as per W-IV, to one employee *w.e.f.* 01.01.1999 and three employees *w.e.f.* 01.01.2000 as per Ext. W-VIII. From Ext. W-VIII, it is found that Party No. 1 had also made regularization of four employees on 12.01.2005 and not till 2004, as claimed by Party No. 1. As the workman fulfilled the condition in 2001 and the Party No. 1 implemented the instruction of regularization of clerical grade-III till 12.01.2005, it is found that the workman is entitled for regularization in clerical grade-III notionally *w.e.f.* 01.01.2001 and financial benefits from 01.01.2002. hence, it is ordered:—

ORDER

The demand of Sanyukt Koyala Mazdoor Sangh, (SKMS) for regularization of Shri Surendra Kalwal in the post of Clerk is legal and justified. The workman is entitled for regularization in clerical grade-III notionally *w.e.f.* 01.01.2001 and financial benefits from 01.01.2002 alongwith all consequential benefits.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2029.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 123/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/181/2002-आईआर (सी एम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2029.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 123/2003) of the Central Govt. Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Limited, A.B. Incline Silewara, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/181/2002-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/123/2003 Dated 27.05.2013

Party No. 1	:	The Superintendent of Mines/ Manager, Western Coalfields Limited, A.B. Incline Silewara, Tah. Saoner, Distt. Nagpur.
	V/s.	
Party No. 2	:	Shri Mukesh S. Ghodeswar, R/o ward No. 4, Near Ranchhodas Primary School, PO. Khparkheda, Tah. Saoner, Distt. Nagpur.

AWARD

(Dated: 27th May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Mukesh Ghodeswar, for adjudication, as per letter No. L-22012/181/2002-IR (CM-II) dated 08.05.2003, with the following schedule:—

> "Whether the action of the management of M/s. Western Coalfields Ltd. through the Superintendent of Mines/Manager, A.B. Incline Silewara Group of Mines, P.O. Silewara, Distt. Nagpur in dismissing the workman Shri Mukesh Shivcharan Ghodeswar from Service *w.e.f.* 06.07.1999 is justified? If not, to what relief is the said workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Mukesh Ghodeswar, ("the workman" in short) filed the statement of claim and the management of WCL ("Party No. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that the Party No. 1 is an industry and he is a workman and the employees of Party No. 1 are governed by the Standing Order of the Party No. 1 and so also by the Bombay Industrial Relations Act and other Statutes framed for the benefits of the employees and he was appointed by the Party No. 1 as a workman in Sillewara colliery and his entire service record was clean and excellent and he was performing his duty sincerely, honestly and to the satisfaction or his superiors and there was never any complaint or show cause notice against him during his service tenure and due to working continuously in the underground, he suffered from chest pain and other diseases and due to such ailments, he was remaining under continuous medical treatment and due to his illness, whenever he was not in a position to attend duties, he used to proceed on medical leave and after becoming fit, he used to submit fitness certificate granted by the doctor and to resume duty and Party No. 1 was very much aware about his such ailments and treatment and inspite of the same, Party No. 1 developed grudge against him and started issuing charge sheet against him on the pretext of his not attending duties regularly and enjoying leave without sufficient cause and Party No. 1 issued charge sheets No. 658 and 683 against him in 1994 and in 1995 respectively, for remaining absent from duty, but later on dropped the proceedings and such action of Party No. 1 clearly shows that they had intended to remove him from services and Party No. 1 again submitted charge sheet no. 431 dated 23.8.1997 against him, on the allegation of his remaining absent without any just and proper reason and he was in habit of remaining absent without sanctioned leave and he submitted his reply to the charge sheet on 25.08.1997, with a request to withdraw the same, but the Party No. 1 appointed enquiry officer for conducting the enquiry and the enquiry officer started the enquiry, but the enquiry was postponed, as his co-worker remained absent on the date of enquiry and thereafter, he made representation to allow him to change his representative and in the mean time, he fell ill and as such, he sought for adjournment of the enquiry, but his request fell into the deaf ears of the enquiry officer and inspite of his best efforts to attend the enquiry, he could not able to attend the enquiry due to his illness and consequently, the enquiry officer submitted his report to the concerned authority, without following the principles of natural justice or giving him any opportunity to change his representative and to defend himself and as such, the enquiry is illegal, arbitrary and perverse and in utter disregard to the principles of natural justice and the final order of his dismissal from services was issued on 06.07.1999, without giving him full and proper opportunity.

It is further pleaded by the workman that Party No. 1 had sanctioned the period of his absence as sick leave and made endorsement on the certificate and when leave had been allowed by the Party No. 1, his so-called absence from duties cannot be said to be absence without just and proper reasons and as such, the very ground of charge sheeting him was false to the knowledge of the Party No. 1 and therefore, the final order passed by Party No. 1 cannot stand to reason and the same cannot be sustained.

The further case of the workman is that as he was suffering from ailment since the year 1996, the Chief Medical Officer, Sanjay Gandhi Memorial Charitable Hospital had advised light duty to him and he had also applied to Party No. 1 by his letter dated 05.11.1996 for light duty, but his request did not yield any result and he was forced to work underground, due to which his health deteriorated and he was required to take medical treatment every now and then and Party No. 1 had also issued another charge sheet against him for his absence during the year 1998-99, even though, they were aware of submission of similar charge sheet in the year 1996 and the conduct of Party No. 1 clearly shows that they were not acting in good faith and even though he was made to answer the charge sheet for his absence during 1996 and 1998, the Party No. 1 while passing the final order dated 06.07.1999, considered his absence from duty for another five years, for which he was not given any opportunity to show cause and Party No. 1 thus had acted upon extraneous material, while passing the final order and the facts and circumstances of the case clearly show that the action of Party No. 1 amounts to unfair labour practice by way of victimization and in colourable exercise of the powers and with undue haste, without following the principles of natural justice and patently for false reasons.

The workman has prayed to quash and set aside the order dated 06.07.1999 and to reinstate him in service with continuity and full back wages.

3. The Party No. 1 in their written statement, denying the allegations made in the statement of claim have pleaded *inter-alia* that WCL is a Central Government undertaking and is having all medical facilities at every minor and is also having super specialty facility in their hospitals for the sole benefit of the employees working with them and they have their own certified standing order and the employees working with them are governed by the same and the workman is not governed by the Bombay Industrial Relations Act and other Statutes and the workman attended duties for 80 days, 72 days, 57 days, 43 days, 79 days and 22 days in the years 1994, 1995, 1996, 1997, 1998 and up to May 1999 respectively and the said figures clearly demonstrate the fact that the workman himself was bent upon for enjoying leave, without any just and proper reason and without obtaining the leave from them and charge sheet dated 28.03.1997 was issued against the workman on the ground of absenteeism and the workman submitted his reply to the same and having found the reply of the workman not to be sufficient, they appointed enquiry officer to conduct the enquiry against the workman in terms of the charge sheet and the enquiry officer commenced the enquiry proceedings and the same were adjourned on the request of the workman himself and the workman had never requested to allow him to change his representative and on the first day of the enquiry, i.e. 12.01.1998, the representative of the workman failed to attend the proceedings and therefore, the proceedings came to be adjourned to 21.02.1998 and as on 21.02.1998, even though, neither the workman nor his representative attended the enquiry, the enquiry officer adjourned the enquiry to 03.03.1998, to give a chance to the workman to take part in the enquiry and in the interest of natural justice and as on 03.03.1998 also, neither the workman nor his representative attended the enquiry, the enquiry officer was constrained to proceed exparte against the workman and second show cause notice was issued to the workman on 05.12.1998, but the workman failed to reply to the same and in order to give full and fair opportunity to the workman, they issued the second show cause notice again on 18.05.1999, calling upon him to give his reply to the same, but the workman failed to give any reply, so, the order of dismissal from services was passed on 06.07.1999 and the period of absence of the workman was never treated as sick leave and the same was never allowed.

It is further pleaded by the Party No. 1 that it is settled position of law that even during the pendency of an enquiry proceedings, the employer is not debarred from issuing another charge sheet against the delinquent employee, in case of committing of similar misconduct during subsequent periods and no unfair labour practice was adopted by them and the workman was not victimized in any manner.

The specific plea of the Party No. 1 is that the workman had formed the habit of remaining absent from duties without giving any kind of intimation to them and at no point of time, he had submitted any application for any kind of leave or any medical certificate to demonstrate the fact of his illness and the workman was given all kind of opportunities, before issuance of the termination order and from the conduct of the workman, it was clear that he was not interested in continuing in services and he choose to remain absent not only from duties, but also did not participate in the enquiry proceedings and the workman is not entitled to any relief.

4. In his rejoinder, the workman has reiterated the facts mentioned in the statement of claim.

5. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and as per order dated 03.01.2013, the departmental enquiry was held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument, the learned advocate for the workman reiterated the facts mentioned in the statement of claim and rejoinder. It was further submitted by the learned advocate for the workman that in the years 1994 and 1995, Party No. 1 had submitted separate charge sheets against the workman on the allegations of remaining habitually absent from duty, but dropped the said proceedings and the Party No. 1 intended to remove the workman anyhow from his services and in view of such facts, it can be safely said that the present removal of the workman from services is nothing but by way of victimization and in colourable exercise of power and due to working continuously in the underground, the workman suffered from chest pain and other diseases and he was undergoing continuous treatment and he used to proceed on medical leave and after becoming fit, he used to submit fitness certificates from the doctor and used to resume duty and inspite of such facts, Party No. 1 had developed grudge against the workman and as the enquiry officer without offering any opportunity to the workman to defend himself had submitted the enquiry report, the said report is illegal, arbitrary and perverse and in utter disregard to the principles of natural justice and the so-called absence from duty of the workman was treated as sick leave and there were endorsement on the medical certificate regarding grant of such sick leave and as such, it cannot be said that the absence of the workman from duty was without just and proper reasons and thus, the very ground of submission of the charge sheet is false and therefore, the final order dated 06.07.1999 cannot stand to reason and cannot be sustained.

7. Per contra, it was submitted by the learned advocate for the Party No.1 that the charge sheet submitted against the workman in 1994 and 1995 were dropped on humanitarian ground and to give him opportunity to improve his conduct, but inspite of the same, the workman failed to improve his attendance and remained absent without obtaining any leave and as such, the Party No.1 was constrained to submit the charge sheet on 21.08.1997

and the charges were duly proved against him in the departmental enquiry and accordingly, the service of the workman was terminated vide dismissal order dated 06.07.1999 and the workman has not filed a single document to demonstrate that he was ever suffering from any disease and he has informed about the same to Party No.1 and obtained leave and the departmental enquiry conducted against the workman has already been held to be legal and proper and the order of punishment cannot be termed as harsh and there is no scope to interfere with the punishment.

In support of the contention, the learned advocate for the Party No.1 placed reliance on the decision reported in (2008) SCC-224 (L&T Komatsu Ltd. Vs. N. Udaykumar).

8. At this juncture, I think it apropos to mention the principles settled by the Hon'ble Apex Court in a string of decisions including the decision cited by the learned advocate for the Party No. 1 regarding the jurisdiction and power of the Tribunal in regard to interference with the findings and punishment in a departmental enquiry.

It is well settled by the Hon'ble Apex Court that:—

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

It is also settled by the Hon'ble Apex Court that:—

"The disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process."

So, keeping in view, the principles as mentioned above, now, the present case in hand is to be considered.

9. On perusal of the materials on record including the documents produced by the parties, it is found that this is not a case of no evidence against the workman. Though the workman has taken the plea that due to his illness, he

was remaining absent from duty after due intimation to Party No.1 and during the relevant period, he was ill and after becoming fit, he submitted fitness certificate issued by the doctor and the period of absence was treated as sick leave and there was endorsement in that regard on the medical certificate, the workman has failed to produce a single document regarding the same. The workman has failed to prove that he had intimated the Party No.1 about his remaining absent from duty, due to his illness, by filing any application or even submission of any application for sick leave or that sick leave was granted to him.

On perusal of the materials on record, it is found that the findings of the Enquiry Officer are based on the evidence on record of the enquiry and not on any extraneous matters. The Enquiry Officer has assigned reasons in support of his findings, after analyzing the evidence in a rational manner. The findings of the Enquiry Officer are not as such, which cannot be reached by a prudent man on the materials available on record. The findings are also not against the evidence on record. Hence the findings of the Enquiry Officer cannot be said to be perverse.

10. So, far the proportionality of the punishment imposed against the workman is concerned, commission of gross misconduct of unauthorized absence from duty has been proved against the workman in a properly conducted departmental enquiry. The punishment of dismissal from service imposed against the workman is therefore cannot be said to be shockingly disproportionate, calling for any interference. Hence, it is ordered:

ORDER

The action of the management of M/s. Western Coalfields Ltd. through the Superintendent of Mines/Manager, A.B. Incline Silewara Group of Mines, P.O. Silewara, Distt. Nagpur in dismissing the workman Shri Mukesh Shivcharan Ghodeswar from Service *w.e.f.* 06.07.1999 is justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2030.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (**संदर्भ संख्या 19/2012.13**) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/159/2012-आईआर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2030.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2012-13) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., Nagpur Area, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/159/2012-IR(CM-II)]

B.M. PATNAIK Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND. PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/19/2012-13 Date: 27.06.2013.

Party No.**1** : The Chief General Manager, WCL Nagpur Area, Kasturba Road, Jaripatka, Nagpur.

Party No.**2** : The General Secretary, Lal Zanda Coal Mines Mazdoor Union, (CITU), C/o. WCL Coal Estate, Civil Lines, Nagpur.

AWARD

(Dated: 27th June, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Vijay Kashinath, for adjudication, as per letter No.L-22012/1/2012-IR (CM-II) dated 16.11.2012, with the following schedule:—

> "Whether the action of the management of WCL, Nagpur through its General Manager in not providing Pay Protection of Category-IV to Shri Vijay Kashinath while providing lighter job on surface due to his accident on 24.09.2004 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Vijay Kashinath ('the workman" in short), filed the statement of claim, claiming that he is entitled for pay protection after he was provided light job on surface.

3. When the reference was fixed for filing of written statement by the Party No.1, a joint pursis of compromise

was filed by the parties on 17.06.2013 with a prayer to dispose of the reference in terms of the compromise.

4. In the pursis, it is mentioned that in view of the judgment of the Hon'ble High Court, Nagpur Bench, dated 15.11.2011 in writ petition no. 4700/2010 (Dhammadip Mankar Vs. Union of India and others) and in view of the circular dated 11.05.2013 circulated by Party No.1 in terms of the above said judgment, the parties entered in anamicable settlement with the terms that the pay of the workman shall be protected and the amount of difference of wages shall be paid to him within a period of six months from the date of order by the Tribunal.

As the parties have settled the Industrial dispute by amicable settlement, the pursis is allowed. Accordingly, the reference is to be answered in favour of the workman in terms of the settlement as mentioned in the compromise pursis. Hence, it is ordered:—

ORDER

The reference is answered in favour of the workman in terms of the settlement mentioned in the compromise pursis. The compromise pursis is made part of the award.

J. P. CHAND, Presiding Officer

ANNEXURE

BEFORE THE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

Ref. No. CGIT/NGP/19/2012 F.F. 17.6.2013

Party No.**1** : The Chief General Manager, Western Coalfields Ltd. Nagpur Area, Nagpur

VERSUS

Party No. **2** : Vijay Kashinath

COMPROMISE PURSIS

The parties to the reference most respectfully begs to submit as under:

1. That the Party No. 2 workman has filed the present reference claiming pay protection since the date he has been posted in alternate job after meeting with an accident.

2. That the Party No. 2 has approached the Party No. 1 to settle their claim of pay protection in terms of Judgement Dt. 15.11.2011 of Hon'ble High Court in Writ Petition No.4700/2010 (Dhammadip Mankar Vs. Union of India & Ors.).

3. That the Party No.1 has taken out a Circular Dt.11.5.2013 No.WCL/ IR/ SE/2013/C-160/988 in terms of the aforesaid judgement.

4. Hence the parties have entered into a amicable settlement on the following terms :

(a) That the pay of the Party No. 2 shall be protected.

(b) That the amount of difference of wages of Party No. 2 shall be paid by the Party No. 1 to the Party No. 2 within a period of six months from the date of order of this Hon'ble Tribunal.

(c) That the Party No. 2 shall not be entitled for interest on the said amount of difference of wages from the Party No. 1 and shall also not claim the same at any time in future.

(d) That the Party No. 2 shall not be entitled for any costs arising out of this litigation and shall also not claim the same at any time in future.

(e) That the right of the Party No.1 to send back the Party No. 2 on his original post in case the Party No. 2 is medically found to be fit. Subsequently for the said post shall not be affected.

5. That the present reference as such may be disposed off in terms of the aforesaid compromise/settlement as agreed upon by and between the parties.

Nagpur Party No. 2
Dt.17.6.2013 Sd/- S/d-
C.F. Party No. 1 Vijay Kasinath

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2031.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (**संदर्भ संख्या 20/2012. 13**) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/160/2012-आईआर (सी एम- II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2031.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 20/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., Nagpur Area, and their workman, received by the Central Government on 02/09/2013.

[No. L-22012/160/2012-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/20/2012-13 Date: 27.06.2013

Party No.1 The Chief General Manager,
WCL Nagpur Area, Kasturba Road,
Jaripatka, Nagpur.

Party No.2 The General Secretary,
Lal Zanda Coal Mines Mazdoor Union,
(CITU), C/o. WCL Coal Estate,
Civil Lines, Nagpur.

AWARD

(Dated: 27th June, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Sankata Prasad Hira Prasad, for adjudication, as per letter No.L-22012/160/2012-IR (CM-II) dated 12.11.2012, with the following schedule:—

> "Whether the action of the management of WCL, Nagpur through its General Manager in not providing Pay Protection of Category-IV to Shri Sankata Prasad Hira Prasad while providing lighter job on surface due to his bilateral Profound hearing loss (on hearing aids) is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sankata Prasad Hira Prasad ("the workman" in short), filed the statement of claim, claiming that he is entitled for pay protection after he was provided light job on surface.

3. When the reference was fixed for filing of written statement by the Party No.1, a joint pursis of compromise was filed by the parties on 17.06.2013 with a prayer to dispose of the reference in terms of the compromise.

4. In the pursis, it is mentioned that in view of the judgment of the Hon'ble High Court, Nagpur Bench, dated 15.11.2011 in writ petition no. 4700/2010 (Dhammadip Mankar Vs. Union of India and others) and in view of the circular dated 11.05.2013 circulated by Party No.1 in terms of the above said judgment, the parties entered an amicable settlement with the terms that the pay of the workman shall be protected and the amount of difference of wages shall be paid to him within a period of six months from the date of order by the Tribunal.

As the parties have settled the Industrial dispute by amicable settlement, the pursis is allowed. Accordingly, the reference is to be answered in favour of the workman in terms of the settlement as mentioned in the compromise pursis. Hence, it is ordered :—

ORDER

The reference is answered in favour of the workman in terms of the settlement mentioned in the compromise pursis. The compromise pursis is made part of the award.

J. P. CHAND, Presiding Officer

ANNEXURE

BEFORE THE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

Ref.No.CGIT/NGP/20/2012F.F. 17.6.2013

Party No. 1 The Chief General Manager,
Western Coalfields Ltd.
Nagpur Area, Nagpur

VERSUS

Party No. 2 Sankata Prasad Hira Prasad

COMPROMISE PURSIS

The parties to the reference most respectfully begs to submit as under :

1. That the Party No.2 workman has filed the present reference claiming pay protection since the date he has been posted in alternate job after meeting with an accident.

2. That the Party No.2 has approached the Party No.1 to settle their claim of pay protection in terms of Judgement Dt.15.11.2011 of Hon'ble high Court in Writ Petition No.4700/2010 (Dhammadip Mankar *Vs.* Union of India & Ors.).

3. That the Party No.1 has taken out a Circular Dt.11.5.2013 No.WCL/IR/SE/2013/C-160/988 in terms of the aforesaid judgement.

4. Hence the parties have entered into a amicable settlement on the following terms :

(a) That the pay of the Party No.2 shall be protected.

(b) That the amount of difference of wages of Party No.2 shall be paid by the Party No.1 to the Party No.2 within a period of six months from the date of order of this Hon'ble Tribunal.

(c) That the Party No.2 shall not be entitled for interest on the said amount of difference of wages from the Party No.1 and shall also not claim the same at any time in future.

(d) That the Party No.2 shall not be entitled for any costs arising out of this litigation and shall also not claim the same at any time in future.

(e) That the right of the Party No.1 to send back the Party No.2 on his original post in case the Party No.2 is medically found to be fit. Subsequently for the said post shall not be affected,

5. That the present reference as such may be disposed off in terms of the aforesaid compromise/settlement as agreed upon by and between the parties.

Nagpur — संकठा प्रसाद
Dt.17.6.2013 — Party No. 2

S/d- S/d-

C.F. Party No. 1 — C.F. Party No. 2

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2032.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 21/2012-13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं. एल-22012/161/2012-आईआर (सीएम-II)]
बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2032.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2012-13) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., Nagpur Area, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/161/2012-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/21/2012-13 Date: 27.06.2013

Party No.1 The Chief General Manager,
WCL Nagpur Area, Kasturba Road,
Jaripatka, Nagpur.

Party No. 2 The General Secretary,
Lal Zanda Coal Mines Mazdoor Union,
(CITU), C/o. WCL Coal Estate,
Civil Lines, Nagpur.

AWARD

(Dated: 27th June, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workmen, Shri Kasim Ali Wald Chand Miya, for adjudication, as per letter No. L-22012/161/2012-IR (CM-II) dated 16.11.2012, with the following schedule:—

"Whether the action of the management of WCL, Nagpur through its General Manager in not providing Pay Protection of Category-IV to Shri Kasim Ali Wald Chand Miya while providing lighter job on surface due to total knee replacement on the left side already where heavy load bearing in contraindicated is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Kasim Ali Wald Chand Miya, ("the workman" in short), filed the statement of claim, claiming that he is entitled for pay protection after he was provided light job on surface.

3. When the reference was fixed for filing of written statement by the Party No.1, a joint pursis of compromise was filed by the parties on 17.06.2013 with a prayer to dispose of the reference in terms of the compromise.

4. In the pursis it is mentioned that in view of the judgment of the Hon'ble High Court, Nagpur Bench, dated 15.11.2011 in writ petition no. 4700/2010 (Dhammadip Mankar *Vs.* Union of India and others) and in view of the circular dated 11.05.2013 circulated by Party No.1 in terms of the above said judgment, the parties entered in an amicable settlement with the terms that the pay of the workman shall be protected and the amount of difference of wages shall be paid to him within a period of six months from the date of order by the Tribunal.

As the parties have settled the Industrial dispute by amicable settlement, the pursis is allowed. Accordingly, the reference is to be answered in favour of the workman in terms of the settlement as mentioned in the compromise pursis. Hence, it is ordered:—

ORDER

The reference is answered in favour of the workman in terms of the settlement mentioned in the compromise pursis. The compromise pursis is made part of the award.

J.P. CHAND, Presiding Officer

ANNEXURE

BEFORE THE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

Ref.No.CGIT/NGP/21/2012 F.F. 17.6.2013

PARTY No. 1 The Chief General Manager,
Western Coalfields Ltd.,
Nagpur Area, Nagpur

VERSUS

PARTY No. 2 Kasim Ali Wald Chand Miya

COMPROMISE PURSIS

The parties to the reference most respectfully begs to submit as under :

1. That the Party No.2 workman has filed the present reference claiming pay protection since the date he has been posted in alternate job after meeting with an accident.

2. That the Party No.2 has approached the Party No.1 to settle their claim of pay protection in terms of Judgement Dt.15.11.2011 of Hon'ble high Court in Writ Petition No.4700/2010 (Dhammadip Mankar *Vs.* Union of India & Ors.).

3. That the Party No.1 has taken out a Circular Dt.11.5.2013•No.WCL/IR/SE/2013/C-160/988 in terms of the aforesaid judgement.

4. Hence the parties have entered into a amicable settlement on the following terms:

(a) That the pay of the Party No.2 shall be protected.

(b) That the amount of difference of wages of Party No.2 shall be paid by the Party No.1 to the Party No.2 within a period of six months from the date of order of this Hon'ble Tribunal.

(c) That the Party No.2 shall not be entitled for interest on the said amount of difference of wages from the Party No.1 and shall also not claim the same at any time in future.

(d) That the Party No.2 shall not be entitled for any costs arising out of this litigation and shall also not claim the same at any time in future.

(e) That the right of the Party No.1 to send back the Party No.2 on his original post in case the Party No.2 is medically found to be fit. Subsequently for the said post shall not be affected.

5. That the present reference as such may be disposed off in terms of the aforesaid compromise/settlement as agreed upon by and between the parties.

Nagpur
Dt.17.6.2013

S/d-
C.F. Party No. 1

S/d-
C.F. Party No. 2
(Kasim Ali Wald Chand Miya)
Party No. 2

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2033.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 26/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/97/2003-आईआर (सीएम-II)]
बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2033.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2006) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Murpar Project (Umrer Area) of WCL and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/97/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COUR, NAGPUR

Case No.CGIT/NGP/26/2006 Date: 03.05.2013

Party No.1(a) : The Sub Area Manager,
WCLMurpar Project (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons,
WCL Contractor, Singhnagar,
Dahegaon,
Chhindwara Road, Distt.
Nagpur (MS)

Versus

Party No.2 Shri Ramkishan
S/o Sh. Sakharam
Tekam, R/o.Murpar, Post:
Khadsanghi,
Teh.-Chimur, Distt.
Chandrapur
Maharashtra.

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workmen Shri Ramkishan Sakharam Tekam, for adjudication, as per letter No.L-22012/97/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Ramkishan S/o Sakharam Tekam is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ramkishan Sakharam Tekam, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No.1 (a) *i.e.* Sub-Area Manager, Murpar Project and Party No.1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No.1(a) also engaged Party No.1 (b), M/s. Singh & Sons in its work *w.e.f.* 05.01.1997 and till Party No.1 (b) is working with Party No.1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L as a General Mazdoor on 07.06.1992 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No.1 (b) *w.e.f.* 01.05.1997 continuously till 28.12.2001 and Party No.1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of Party No.1 (a) and party No.1(a) is the principal employer and his appointment by both the contractors was oral and the Party No.1 (b) terminated his services orally *w.e.f.* 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by Parties No.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no.1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as Party No. I was the principal employer and Party No.1(b) was the contractor of Party No.1 (a), for each and every act of the Party No.1 (b), the Party No.1(a) was responsible and as such, the Party No.1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No.1 (a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No.1 (b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded *inter-alia* that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3 1/2 months and the incline shaft drivage within eight months and it also awarded another contract to Party No.1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No.1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it [Party No.1(a)] was related to Party No.1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the Party No.1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers

was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No.1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka *Vs.* Umadevi, Union Public Service Commission *Vs*. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No.1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No.1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by Party No.1 (a) and BGML engaged him from 07.06.1992 to 02.07.1996 as a General Mazdoor and that he was again engaged by Party No.1 (b), another contractor from 01.05.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No.1 (a). The only claim of the workman is that Party No.1 (a) had sent him for vocational training and he had under gone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No.1(a), as because, he was sent for vocational training by Party No.1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No.1(a) and he was employed by the contractors and the Party No.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No.1 (b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:—

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the

workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25-B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal *Vs.* M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, *i.e.* the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay *Vs.* Rajeev Kumar) has held that:

"Industrial Disputes Act (14 of 1947) S.25-F, 10-Retrenchment compensation-Termination of services without payment of -Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management- Onus lies upon workman to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2034.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 27/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/98/2003-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2034.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.27/2006 of the Cent.Govt. Indus.Tribunal-cum-Labour Court,

NAGPUR as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/98/2003-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/27/2006 Date: 03.05.2013

Party No.**1(a) :** The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons,
WCL Contractor, Singhnagar, Dahegaon,
Chhindwara Road, Distt. Nagpur(MS)

Versus

Party No. **2 :** Shri Manohar S/o Sh. Gopala Dehade,
R/o. Minzhari, Post: Khadsangi, Teh.-
Chimur, Distt. Chandrapur Maharahtra.

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Manohar Gopala Dehade, for adjudication, as per letter No.L-22012/98/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Manohar S/o Gopala Dehade is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Manohar Gopala Dehade, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No.1 (a) i.e. Sub-Area Manager, Murpar Project and Party No.1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No.1(a) also engaged Party No.1 (b), M/s. Singh & Sons in its work *w.e.f.* 05.01.1997 and till Party No.1 (b) is working with Party No.1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L as a Pump Khalasi/Loader on 17.08.1993 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No.1 (b) *w.e.f.* 05.01.1997 continuously till 28.12.2001 and Party No.1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of Party No.1 (a) and Party No.1(a) is the principal employer and his appointment by both the contractors was oral and the Party No.1 (b) terminated his services orally *w.e.f.* 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no.1 (a) and 1 (b), but they did not fulfil the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as Party No.1 was the principal employer and Party No.1(b) was the contractor of Party No.1 (a), for each and every act of the Party No.1 (b), the Party No.1(a) was responsible and as such, the Party No.1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No.1(a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No.1(b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded inter-alia that it had entered into a contract with B.G.M.L.

for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3 1/2 months and the incline shaft drivage within eight months and it also awarded another contract to Party No.1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No.1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it [Party No.1(a)] was related to Party No.1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the Party No.1(a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No.1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No.1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No.1(b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of sections 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by Party No.1(a) and BGML engaged him from 17.08.1993 to 02.07.1996 as a Pump Khalasi/Loader and that he was again engaged by Party No.1(b), another contractor from 05.01.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No.1(a). The only claim of the workman is that Party No.1(a) had sent him for vocational training and he had under gone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No.1(a), as because, he was sent for vocational training by Party No.1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the

pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No.1(a) and he was employed by the contractors and the Party No.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No.1(b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:—

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25-B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B."

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)—Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that:

"Industrial Disputes Act (14 of 1947)- S.25-F, 10-Retrenchment compensation—Termination of services without payment of—Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination—Claim denied by management—Onus lies upon workman to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2035.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 28/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/99/2003-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2035.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 28/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/99/2003-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/28/2006 Date: 03.05.2013

Party No. 1(a) : The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) : M/s Singh & Sons,
WCL Contractor, Singhnagar, Dahegaon,
Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No. 2 : Shri Mahadeo S/o Vikru Shivarkar,
R/o Minzhari, Post: Khadsangi,
Teh.-Chimur, Distt. Chandrapur
Maharashtra .

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Mahadeo Vikru Shivarkar, for adjudication, as per letter No. L-22019/99/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Mahadeo S/o Vikru Shivarkar is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mahadeo Vikru Shivarkar, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No. 1(a) *i.e.* Sub-Area Manager, Murpar Project and Party No. 1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground roap up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No. 1(a) also engaged Party No. 1(b), M/s Singh & Sons in its work *w.e.f.* 05.01.1947 and till Party No. 1(b) is working with Party No. 1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L. as a General Mazdoor on 18.08.1993 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No. 1(b) *w.e.f.* 20.01.1997 continuously till 28.12.2001 and Party No. 1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/ employee of Party No. 1(a) and Party No. 1(a) is the principal employer and his appointment by both the contractors was oral and the Party No. 1(b) terminated his services orally *w.e.f.* 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no. 1(a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1(a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further

pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no. 1(a) 1(b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as Party No. 1 was the principal employer and party 1(b) was the contractor of Party No. 1(a), for each and every act of the Party No. 1(b), the Party No. 1(a) was responsible and as such, the Party No. 1(a) is responsible for illegal termination. The workman has prayed for his reinstatement in services with continuity and full back wages.

3. The Party No. 1(a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No. 1(b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded *inter-alia* that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3 1/2 months and the incline shaft drivage within eight months and it also awarded another contract to Party No. 1(b) for construction of drivage of a pair of incline shaft through sedimentary rocks like and stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No. 1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.5.1999 and 01.12.2001 respectively and it [party no1(a)] was related to Party No. 1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employee as per their need. It is further pleaded by the Party No. 1(a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way invovled in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract the documents filed by the workman show that he was appointed by Party No. 1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka *Vs.* Umadevi, Union Public Service Commission *Vs.* Girish Jayanti (2006 (2) SCALE 115) and many others, the workman is not entitled for regulariziation or reinstatement in service as he was a temporary workman.

The further case of Party No. 1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexux between the contract given to B.H.M.L. and the contract given to party Party No. 1(b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in suport of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s B.G.M.L., who was given contract for construction of roads in the undeground of Murpar colliery by Party No. 1(a) and BGML engaged him from 18.08.1993 to 02.07.1996 as a General Mazdoor and that he was again engaged by Party No. 1(b), another contractor from 20.01.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No. 1(a). The only claim of the workman is that Party No. 1(a) had sent him for vocational training and he had undergone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No. 1(a), as because, he was sent for vocational training by Party No. 1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or a

connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and workman does not show that a legal relationship between a person employed in an industry and the owner of the industry if created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the term "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No. 1(a) and he was employed by the contractors and the Party No. 1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinon not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually, destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No. 1(b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery *Vs.* Their workmen) have held that:—

> "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrrupted service is necessary if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has not removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal *Vs.* M/s. Bharat Electronics Ltd)., the Hon'ble Apex Court have held that,

> "Industrial Disptues Act (14 of 1947). Section 25-B (1) and (2) - Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).
>
> Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 203 SC-38 (M/s. Essen Deinay *Vs.* Rajeev Kumar) has held that:

> "Industrial Disputes Act (14 of 1947-S.25-F, 10—Retrenchment compensation-Termination of services without payment of —Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination-Claim denied by management—Onus lies upon workman to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is

necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2036.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 29/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/100/2003-आई आर (सी एम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2036.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/100/2003-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/29/2006 Date: 03.05.2013

Party No. 1(a) : The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons,
WCL Contractor, Singhnagar, Dahegaon,
Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No.2 : Shri Vijay S/o Sh. Tulshiram Athargade,
R/o, Murpar, Post: Khadsanghi,
Teh.-Chimur, Distt. Chandrapur
Maharashtra.

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Vijay Tulshiram Athargade, for adjudication, as per letter No. L-22012/100/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Vijay S/o Tulshiram Athargade is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Vijay Tulshiram Athargade, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No. 1 (a) *i.e.* Sub-Area Manager, Murpar Project and party no. 1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." is short) for the purpose of preparing underground road up to the border of coal for the said coal

mine and the contract of the said work was from 1992 to 1996 and the Party No. 1(a) also engaged Party No. 1(b), M/s. Singh & Sons in its work *w.e.f.* 05.01.1997 and till Party No. 1(b) is working with Party No. 1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L. as a General Mazdoor on 17.05.1992 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No. 1 (b) *w.e.f.* 05.01.1997 continuously till 28.12.2001 and Party No. 1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of Party No. 1(a) and Party No. 1(a) is the principal employer and his appointment by both the contractors was oral and the Party No. 1(b) terminated his services orally *w.e.f.* 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no. 1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no. 1(a) and 1(b), but they did not fulfill the same and for that a dispute was pending before the ALC(C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as Party No. 1 was the principal employer and Party No. 1 (b) was the contractor of Party No. 1 (a), for each and every act of the Party No. 1 (b), the Party No. 1(a) was responsible and as such, the Party No. 1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No. 1(a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded *inter-alia* that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3 3--$\frac{1}{2}$ months and the incline shaft drivage within eight months and it also awarded another contract to Party No. 1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No. 1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it Party No. 1(a) was related to Party No. 1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the Party No. 1(a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No. 1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka *Vs.* Umadevi, Union Public Service Commission *Vs.* Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No. 1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No. 1(b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce

evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by Party No. 1 (a) and BGML engaged him from 17.05.1992 to 02.07.1996 as a General Mazdoor and that he was again engaged by Party No. 1(b), another contractor from 05.01.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No. 1(a). The only claim of the workman is that Party No. 1(a) had sent him for vocational training and he had undergone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No. 1(a), as because, he was sent for vocational training by Party No. 1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No. 1(a) and he was employed by the contractors and the Party No. 1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No. 1(b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery *Vs.* Their workmen) have held that:—

> "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions however, is not different. In fact, the amendment of section 25-F of the Principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this serivce must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

> "Industrial Disputes Act (14 of 1947). Section 25-B(1) and (2)-Continuous serivce-Scope of sub-sections (1) and (2) is different, (words and phrases-

Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from serivce. Section 25-B as the dictionary clause for the expression "Ccontinuous". Both in principle and are precedent it must be held that section 25-B(2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay *Vs.* Rajeev Kumar) has held that:

> "Industrial Disputes Act (14 of 1947) S-25-F, 10-Retrenchment compensation-Termination of services without payment of-Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination-Claim denied by management-Onus lies upon workman to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2037.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 31/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/102/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2037.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 31/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workmen, received by the Central Government on 02.09.2013.

[No. L-22012/102/2003-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/31/2006 Date: 03.05.2013

Party No. 1(a) : The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons,
WCL Contractor, Singhnagar, Dahegaon,
Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No. 2 : Shri Pundlik S/o Shri Manik Kosare,

R/o. Murpar, Post: Khadsanghi,
Teh.-Chimur, Distt. Chandrapur
Maharashtra.

AWARD

(Dated : 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Pundlik Manik Kosare, for adjudication, as per letter No. L-22012/102/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

"Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Pundlik S/o Manik Kosare is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Pundlik Manik Kosare, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No. 1 (a) i.e. Sub-Areas Manager, Murpar Project and Party No. 1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No. 1(a) also engaged Party No. 1(b), M/s. Singh & Sons in its work w.e.f. 05.01.1997 and till Party No. 1(b) is working with Party No. 1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L. as a Loader on 11.07.1993 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No. 1(b) w.e.f. 05.1.1997 continuously till 28.12.2001 and Party No. 1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of Party No. 1(a) and Party No. 1(a) is the principal employer and his appointment by both the contractors was oral and the Party No. 1(b) terminated his services orally w.e.f. 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties No. 1(a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties No. 1(a) and (b) they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties No. 1(a) and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties No. 1(a) and 1(b), but they did not fulfill the same and for that a dispute was pending before the ALC(C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December, 2001 was not paid to him and as Party No. 1 was the principal employer and Party No. 1(b) was the contractor of Party No. 1(a), for each and every act of the Party No. 1(b), the Party No. 1(a) was responsible and as such, the Party No. 1(a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No. 1(a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded inter-alia that it has entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to Party No. 1(b) for construction of drivage of a pair of incline shaft through sendimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No. 1(b) for construction of drivage of incline shaft at Murpar Project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it (Party No. 1(a)) was related to Party No. 1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the Party No. 1(a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor,

whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No. 1(b) for contract works at Murpar project, as temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka *Vs.* Umadevi, Union Public Service Commission *Vs.* Girish Jayanti (2006 (2) Scale 115) and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No. 1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No. 1(b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s B.G.M.L., who was given contract for construction of roads in the underground of Murpar Colliery by Party No. 1 (a) and BGML engaged him from 11.07.1993 to 02.07.1996 as a Loader and that he was again engaged by Party No. 1 (b), another contractor from 05.01.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No. 1 (a). The only claim of the workman is that Party No. 1 (a) had sent him for vocational training and he had under gone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No. 1(a), as because, he was sent for vocational training by Party No. 1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an estblishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No. 1(a), and he was employed by the contractors and the Party No. 1(a), was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was laso the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No. 1(b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery *Vs.* Their

workmen) have held that:—

> "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by subsituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal *Vs.* M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

> "Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2) — Continuous Service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).
>
> Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, *i.e*. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay *Vs.* Rajeev Kumar) has held that:

> "Industrial Disputes Act (14 of 1947- S.25-F, 10 — Retrenchment compensation —Termination of services without payment of — Dispute referred to Tribunal — Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management- Onus lies upon workman to show that he had in fact worked for 240 days in a year-in absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termiantion."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2038.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 268/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त

हुआ था।

[सं॰ एल-22012/180/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2038.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 268/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/180/2003-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/268/2003 Date: 02.04.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai - 400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Ravindra Ramesharan Yadav, for adjudication, as per letter No. L-22012/180/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Ravindra Ramesharan Yadav, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ravindra Ramesharan Yadav, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 02.09.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract

Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 02.09.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as Torch, Lathi, Whistle and Uniform, etc to the workman and as such, the workman is not entitled. to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the

statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 02.09.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/S Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/S Security services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/S Industrial Security and Fire Services from16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 02.09.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/S Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 02.09.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03 05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the

Party No. 1 is the real employer and there was master and servant relationsthip between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25- F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Honble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhnim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur. for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd.' and others *Vs.* National Union water front workers and others

(reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

XX XX XX

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section

10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate Government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not

abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the Government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate Government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central Government or by any appropriate Government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-11 LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656

(supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
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> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator• will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.
>
> Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/-9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/-2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/- 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.
>
> It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to

him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2039.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालयए नागपुर के पंचाट (संदर्भ संख्या 269/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं. एल-22012/181/2003-आई आर (सी एम-II)]

बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2039.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 269/20030 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/181/2003-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/269/2003 Date 02.04.2013.

Party No. 1 (a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1 (b) :The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Raju Tukaram Badage, for adjudication, as per letter No. L-22012/181/2003-IR (CM-II) dated 08.12.2003, with the following schedule :—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Raju Tukaram Badage, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Raju Tukaram Badage, ('the workman' in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 06.01.1991 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one months' wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1991, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed

the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by he contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 06.01.1991 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminated any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the, workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not isued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were

appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 06.01.1991. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s. Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 06.01.1991 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s. Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 06.01.1991 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a comouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Part No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005-I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work

with Party No. . 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25- F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011(128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatment in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs soughts in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

** ** **

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper. The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunicated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean, (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10 of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and

benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has, been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the

Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been Insisting that the contractor or the new contractor•retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be Pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....." 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The

intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as a such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Ca1): W.A. Nos. 345- 354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence-, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application

of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the dicisions on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2040.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 270/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/182/2003-आई आर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2040.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award Ref. 270/2003 of the Cent. Govt. Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/182/2003-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/270/2003 Date: 02.04.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgatye,
Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disptues Act, 1947 (14 of 1947) ("the Act in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Washudeo Namdeo Sarkate, for adjudication, as per letter No. L-22012/182/2003-IR (CM-II) dated 08.12.2003, with the following schedule:-

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Washudeo Namdeo Sarkate, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Washudeo Namdeo Sarkate, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 06.01.1991 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1991, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch , lathi, whistle and uniform etc to him and in view of

the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 06.01.1991 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor and made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle ad uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 06.01.1991. He has also admitted the suggestions given to him in his cross-examination that contract for supply for security guards was given to Singh Security Services for two years and

subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd, from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/S Chitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992 to M/S Security service Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/S Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 06.01.1991 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/S Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerend officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 06.01.1991 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as requried under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the cotnract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of none documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along-with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibliim' had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through

contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-11 LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-11 CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall

be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract

labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had noting to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called

contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T Nos. 1704 and 1705 of 1999, D/ -12.08.1999 (Cal): C.O. No. 6545(W) if 1996, D/- 9.5.1997 (Cal): W.A. Nos. 345-354 of 1997m, D/- 17.4.1998 (Kant): W.P. No. 4050 of 1999, D/-2.8.2000 (Bom) and W.P. No. 2616 of 1999, D/-23.12.1999 (Bom.), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virture of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract Labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contempalate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the Union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Government of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial

legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time. Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The Reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2041.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 271/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.09.2013 को प्राप्त हुआ था।

[सं॰ एल-22012/183/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2041.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 271/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02.09.2013.

[No. L-22012/183/2003-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/271/2003 Dated: 02.04.2013

Part No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Part No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchagatye,
Mumbai-400020.

Part No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar,
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Gautam Ramdas Meshram, for adjudication, as per letter No. L-22012/183/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Gautam Ramdas Meshram, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Gautam Ramdas Meshram ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Part No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of

guards in violation of the provision of section 25-H of the Act and work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him, and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.08.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has to right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on

01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendence of the the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. l.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the party No.l. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 0l.08.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/s Security Services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 01.08.1993 till14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one months notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duitres of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to

produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.02.1998 and thought Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submission, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the party no 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some other had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and

Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others (reported in 2001 (7) SCC 1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> XX XX XX XX
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate quthority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 •to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such• direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994-II CLR-402 (Supra), on which reliance is •placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act,

1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the •contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal

employer. This court in the case of Gammon India limited *Vs.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate Government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point, of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....." The expression employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that

industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhra Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before by and contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employers who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular worken he shall given preference to the erstwhile contract labour. It otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifiacation other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): No. 6545 (W) if 1996, D/ -9-5-1997 (Cal): W.A.Nos. 345-354 of 1997 m D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/-2.8-2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It it a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could be correct of contract labour. When the provision of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made their under."

So, keeping in view the principles enunciated by the Hon'ble Apex court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1 there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the dicisions by the Hon'ble Courts, on which reliance has been placed by the Union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibiton of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workiman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that threre was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite differenct from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. so the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enuniciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2042.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 299/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/242/2003-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2042.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 299/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Indusutrial Dispute between the Management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/242/2003-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/299/2003 Date: 02.04.2013.

Party No.1(a) : The District Manager,
Food Corporation of India, Ajani,
Nagpur,
Nagpur -440015.

Party No.1(b): The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgate,
Mumbai - 400020.

Party No.2: The Secretary,
Rashtriya Mazdoor Sena, Hind
Nagar, Ward No. 2,
Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 2nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Uttam Narayan Sawale, for adjudication, as per letter No.L-22012/242/2003- IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Uttam Narayan Sawale, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Uttam Narayan Sawale, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.08.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but

at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so-called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleaded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.08.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were

handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 01.08.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/s Security services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 01.08.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of FCI were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so-called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I CLR-254 (Statesman Ltd. Anr. *vs*. Eight Industrial Tribunal, West Bengal ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so-called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so-called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No.1 and it was Party No. 1, who terminated the services of the workman without compliance

of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *vs*. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *vs*. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *vs*. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *vs*. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *vs*. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *vs*. National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
>
> xx xx xx xx
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter

within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper". The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *vs.* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins

that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour, but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *Vs.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been

found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:-

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract

labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345- 354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2043.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 10/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/125/2008-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2043.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 10/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Ballapur Area, Ballarpur Western Coalfields Ltd. WCL, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/125/2008-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/10/2009 Date: 17.05.2013.

Party No. 1 : Chief General Manager,
Ballarpur Area, Ballarpur Area
Of Western Coalfields Ltd.,
At/P.O. Sasti, Distt. Chandrapur,
Chandrapur (M.S.)

Versus

Party No. 2 : Koyla Shramik Sabha (HMS),
At/P.O. Ballarpur, Distt.
Chandrapur (M.S.)

AWARD

(Dated: 17th May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Ltd., and their workman, Shri M.S. Bhasarkar for adjudication, as per letter No. L-22012/125/2008-IR (CM-II) dated 06.03.2009, with the following schedule:-

> "Whether the action of the management of Ballarpur Area of WCL in denying promotion to Shri M.S. Bhasarkar, ignoring his merit and seniority is legal and justified? To what relief is the workman concerned entitled and from which date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Koyla Shramik Sabha" ('the union" in short), filed the statement of claim on behalf of the workman and the management of Western Coalfields Ltd., ("Party No. 1" in short), filed its written statement.

The case of the workman as projected in the statement of claim by the union is that it (union) is a registered trade union, under the Trade Unions Act, 1926 and the Party No. 1 is a Government Company and is a "state" within Article-12 of the Constitution of India and the provisions of the National Coal Wages Agreements ("NCWA" in short) are mandatory and binding on all the Coal Companies including the Party No. 1 and the Joint Bipartite Committee for the Coal Industry, ("JBCCI" in short) *vide* different implementation instructions issued through the Director (P&IR) Coal India Ltd.-cum-Secretary to JBCCI has evolved different promotional cadres of different trades and in ministerial cadre scheme itself, promotional channels have been evolved separately for General Clerical Cadre, Store Personnel, Loading Personnel, Cash Personnel and Secretariat Cadre etc and the present reference is concerned with cadre scheme for Ministerial Staff (General Cadre) and Ministerial Staff (Loading Personnel) and as per Cadre Scheme VIII-1, given in the implementation Instruction No. 34 dated 17.07.1984, the carrier growth for Ministerial Staff (General Clerical Cadre) is Clerk Grade-III,, Clerk Grade-II, Typist, Clerk Grade-I, Special Grade Clerk/Sr. Clerk and finally Office Superintendent in Technical and Supervisory Grade A and as per Cadre Scheme VIII, the carrier growth of Loading Personnel is Asstt. Loading Clerk Grade-III, Loading Clerk Grade-II, Asstt. Loading Inspector/Asstt. Loading Supdt. (T&S) Grade-C, Asstt. Loading Inspector/Asstt. Loading Supdt. (T&S) Grade-B and finally Sr. Loading Inspector/Sr. Loading Supdt. (T&S) Grade-A.

The further case of the workman as presented by the union is that the workman belongs to Schedule Caste community and he passed the SSC examination in 1981 and he was appointed as a trainee, *vide* letter dated 12.04.1989 at Sasti Open Cast Project and he was placed in Category-II w.e.f. 15.05.1990, *vide* letter No. 1877 dated 07.11.1990 and soon after his regular appointment, due to acute exigencies of job, Party No. 1 placed him to supervise one of the shifts of loading of coal in Pander Pawani Railway siding of Sasti Open Cast Project and the letter dated 27/28.10.1990 of the Sub-Area Manager addressed to Pander Pawani Railway siding in-charge confirms such claim and the workman was performing the job of Asstt. Loading Inspector/Asstt. Loading Supdt. as per the cadre scheme of Loading Personnel and was thus entitled to be put in technical and supervisory grade 'C' and to be paid the remuneration accordingly, from the date he was placed as such, but the Party No. 1 adopted unfair labour practice and did not pay him wages of Technical and Supervisory Grade 'C' and the Dy. Personnel Manager, Sasti Sub-Area issued office order No. 277 dated 13.01.1992/01.02.1992, allowing officiating allowance of clerical grade-III to him w.e.f. 15.02.1992 and *vide* order dated 07/11.08.1993 of the Dy. Personnel Manager, the workman was promoted/regularized as Clerk-Grade-III w.e.f. 15.05.1993 and he was put on probation, without mentioning any time limit, against the terms and conditions of the Certified Standing Order and as per letter No. 495 of 1993 of the Sub-Area Manager, Sasti Sub-Area, the workman was designated as Asstt. Loading/Weigh Bridge Clerk and though the workman was senior, his basic wages were so fixed that his juniors used to get more, but the mistake was rectified *vide* office order No. 3013 dated 07/09.12.1993 and though the workman had been representing for his promotion and regularization in higher grade, according to the job performed by him, his appeal remained unheard and unattended and the workman was promoted as Loading Clerk Grade-II w.e.f. 10.07.1997.

It is also pleaded by the union on behalf of the workman that, two clerks of general clerical cadre, too junior to the workman and not belonging to the Loading Personnel Cadre, namely, Shri M. Prabhudas and Shri Venu Gopal Kusuma were transferred from Gauri Sub Area to Sasti Open Cast Sub Area in 1996 and though Shri M. Prabhudas and Shri Venu Gopal Kusuma were not in Loading Personnel Cadre, they were promoted as Asstt. Loading Inspector, Grade-C, w.e.f. 01.01.1998, *vide* office order No. 4025 dated 06/08.06.1998 of Personnel Manager, Sasti Sub Area and there had been manipulation and their categorization is irregular, illegal and without adhering to procedure laid down to change of cadre and ignoring the seniority and merit of the workman, Party No. 1 again promoted Shri M. Prabhudas as Loading Supdt./Inspector (T&S) Grade-B from Grade-C *vide* order No. 6726 dated 14.10.2005 of Area Personnel Manager, Ballarpur Area and similarly, Shri Venugopal was also promoted as Supdt./Inspector (T&S) Grade-B from Grade-C w.e.f. 14.10.2005 and the workman was promoted from Loading Clerk Grade-II to Asstt. Loading Inspector (T&S) Grade-C w.e.f. 25.03.2002 *vide* letter No. 1017 dated 25.03.2002 and the workman had been representing against the injustice meted out towards him by submitting the comparative chart containing his service details alongwith that of Shri Prabhudas, Shri Venugopal and one Shri Atul G. Deolkar, but no action was taken by the Party No. 1 on his representations and Shri M. Prabhudas and Shri Venugopal Kusuma were appointed as General Mazdoors daily rated category-I w.e.f. 09.12.1992 and 21.12.1992 respectively and were regularized as General Clerk in Clerical Grade III from 01.01.1994 and just after one year, they were further regularized as Clerk Grade II w.e.f. 01.01.1995 and on the same analogy, the workman is entitled to be regularized as Asstt. Loading Inspector/Asstt. Loading Supdt. In Grade-C, after his completing of 240 days of attendance, *i.e.* with effect from 01.01.1992 and he should have been treated as such for all purposes and he is entitled for the differential salary from 27/28.10.1990 to 31.12.1991 and he is entitled to Grade B w.e.f. 01.01.1997. The union has further pleaded that one Shri Atul Dewalkar of Dhoptala open cast mine was categorized as loading clerk from other cadre without following the due procedure and he was regularized as loading clerk grade II w.e.f. 01.01.1995 and though Shri Dewalkar was junior to the workman, he was promoted to the post of Asstt. loading Inspector/Asst. loading Supdt. (T&S) grade C w.e.f. 01.07.1998, where as the workman was promoted to grade C (T&S) w.e.f. 25.03.2002.

The union has prayed to direct the Party No. 1 to give promotion to the workman with retrospective effect with wages and all consequential benefits and compound interest @ 18% per annum on the dues and to place the workman in the seniority list in the proper place.

3. The Party No.1 in the written statement has pleaded inter alia that the reference is vague, due to non-mention of the designation of the workman, the post to which his right and seniority was ignored in the matter of promotion, the date from which the benefit was deemed to accrue etc. and as the essential ingredients of the reference are absent, the reference is not maintainable in the eyes of law and the reference is highly belated, as retrospective promotion is being claimed from the year 1992, starting from the post of Assistant loading clerk (grade III) on wards to different higher posts and the union has raised the industrial dispute after sixteen years of the alleged cause of action and as such, the reference is not maintainable. It is further pleaded by the Party No.1 that it is settled principles of law that giving promotion to the employees is a managerial function, which depends upon availability of sanctioned post, need of the management to fill up the post, eligibility of the employees and determination of their competence through the process of Departmental Promotion Committee and promotion cannot be claimed in general terms and more over, the subject matter of promotion is not within the second or third schedule of the Act and therefore, the reference is not maintainable.

The further case of the Party No.1 is that it is evident from the statement of claim that at different stages, promotions had been taken place in the cadre of Ministerial staff (Loading Personnel) on and from the year 1992 and if any disturbance is caused in the cadre, after such a long time, it will lead to serious repercussion and disturbance of industrial peace and harmony, as number of disputes are likely to emerge on behalf of the other employees in the cadre and as the purpose of industrial adjudication is to minimize emergence of industrial disputes and not to fructify them, the reference is not to be entertained. It is further pleaded by the Party No. 1 that in the cadre scheme for the loading personnel, there are five stages of growth, starting from Assistant Loading Clerk Grade III to Senior Loading Inspector/Senior Loading Supervisor Grade A and there is no provision of time bound promotion in the cadre scheme and as the ministerial staff (General) and Loading Personnel belong to ministerial staff, sometimes inter-changeability takes place and for promotion from one post to another, minimum qualification (educational/technical), eligibility norms and modes of promotions have been provided, by the JBCCI and the relevant cadre scheme, Annexure - 1 filed by the union is not disputed and the consideration zone for promotion to the posts upto Grade 'B' is area wise and for Grade 'A' is company wise and within the area, posts upto Supdt. Grade 'C' are considered on unit/sub area level and the posts in Grade 'B' are considered at area level and such promotions are examined and considered by the Promotion Committee constituted for the purpose and when a employee is transferred from one establishment/consideration zone to another establishment/consideration zone on administrative

grounds/ needs of necessity of the management, he carries his seniority of post to the new place of posting and if the employee is transferred on his own request, he looses his seniority at the new place of posting and his seniority at the new place of posting in the relevant post is being count from the date of his joining and the workman was appointed as a trainee in category - I, w.e.f. 12.04.1989 at Sasti Open Cast project and after completion of his training, he was appointed as a regular employee in category - II w.e.f. 15.05.1990 and while the workman was in category - II, he was allowed to officiate in the post of clerical grade - III (Asstt. loading clerk) w.e.f. 15.05.1992 alongwith 15 others and subsequently, he was promoted/regularized alongwith three others to the post of clerk grade - III w.e.f. 15.05.1993 and the workman did not have any grievance against the management at that stage and he did not lodge any protest and according to his job performance in the loading cadre, he alongwith some others was recategorized/redesignated as Asstt. Loading! Weighbridge clerk corresponding to clerk grade - III in general clerical cadre and the same was also not protested or objected by the workman as he found the said arrangement in his interest and on the ground of anomaly, his pay was stepped up by one increment w.e.f. 01.06.1993 and the workman was again promoted as loading clerk grade - II w.e.f. 01.07.1997, vide office order dated 25.10.1997 and he was further promoted to the post of Asstt. Loading Inspector (T&S) Grade - 'C' vide order dated 25.03.2002 and all the promotions were given to the workman between the years 1990 to 2002, i.e. within a period of 12 years and the cadre norms were followed and his merit and seniority were duly considered and therefore, the grievance contemplated in the terms of the reference had stood complied and there is no ground for holding adjudication on this issue and the office order dated 06/08.06.1998, which has been filed by the union as document No. W-8 shows that Shri Venugopal Kusuma and Shri M. Prabhudas were shown as Loading Clerk Grade - II and as such, they were rightly promoted as Asstt. Loading Inspector, Grade - 'C' and the workman did not lodge any protest against the promotion of Shri Kusuma and Shri Prabhudas at the relevant time and to say that the workman was superseded, after a gap of 10 years is merely an afterthought and Shri Kusuma and Shri Prabhudas had come on transfer to Sasti Sub Area from Gauri Sub Area, vide office order dated 07.11.1996 and vide corrigendum dated 14.03.1997, issued by the Sub Area Manager, Gauri Sub Area, those two persons had been performing loading jobs alongwith five others and in the year 2005, a DPC was held at the area level for promotion to Technical Supervisory, Grade- 'B' post and as the workman had not put in the requisite experience in the lower post i.e. Grade-'C', he could not be considered for promotion and therefore, the question of considering him for Grade -`B' post did not arise at that time and another DPC was held in the year 2007, for promotion to Technical Supervisory, Grade - 'B' post and in the said DPC, 16 candidates including the workman were recommended for promotion, but since there were only five sanctioned posts, the employees, who were at serial numbers 1,2,3,4 and 6 were promoted and as the name of the workman was at serial no. 13, the question of his promotion at that stage did not arise and in the DPC held on 15.11.2008, the name of the workman was at a much lower position in the panel and as there was only one sanctioned post, Shri R.D. Nishad, who was no. 1 amongst the 13 recommended candidates was given the promotion and the workman was not promoted and as the workman was given promotions at relevant stages,by considering his merit and seniority, the reference is to be answered against the workman, holding that no industrial dispute exists.

It is further pleaded by the Party No. 1 that the letter dated 27/28.10.1998 is misinterpreted by the union and the endorsement of the said office order to the workman was as a clerk alongwith three others and the workman was never called as Shift In-charge and he was never asked to do the jobs of the Shift In-charge and no unfair labour practice was adopted by the management and the workman when was promoted to Grade - 'C', he did not claim any retrospective benefit and as the workman was never authorized/deputed to work as Asstt. Loading Inspector, the question of paying wages of the said post does not arise and in any case, if there was any of truth in the statement, then why the grievance was not ventilated by the workman for red-ressal and raising of such a claim, after a gap of nearly 10 years is highly belated and untenable and the workman is not entitled to any relief.

4. In the rejoinder, the union has pleaded that as the reference has been made by the Central Govt. to this Tribunal for adjudication, after considering the merit of the dispute, the Tribunal is competent to adjudicate the same and the Act is a social welfare legislation and the same should be interpreted as such and the provisions of limitation Act are not applicable to the proceedings under the Act and relief under the Act cannot be denied to workman merely on the ground of delay and there is no delay in this case.

5. In order to prove their respective stands, the parties have led oral evidence, besides placing reliance on the documentary evidence. The workman has examined himself as a witness in support of his case, where as, one Shri V.S. Ramanujam, the Manager (Personnel) of Ballarpur Area Office has been examined as a witness by the Party No. 1.

In this examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim and rejoinder. However, in the cross-examination, the workman has admitted that after completion of his training, he was appointed in category - II on 15.05.1990 and on 15.05.1993, he was regularized as Asstt. Loading Clerk w.e.f. 05.05.1990 and as per office order dated

25.10.1997, he was promoted to Clerk Grade - II w.e.f. 01.07.1997 and by office order dated 25.03.2002, he was promoted as Asstt. Loading Inspector (T&S), Grade - 'C' w.e.f 25.03.2002 and in document no. W-II, his designation has been mentioned as a clerk. The workman has further admitted that in 1996, Shri Prabhudas and Shri Venugopal Kusuma were transferred from Gauri Sub Area to Sasti Sub Area and at that time, they were in Clerical Grade-II and he did not lodge any protest against the transfer of those two employees. The workman has further admitted in his cross-examination that in 1998, a DPC was held at Sasti Sub Area for promotion to the post of Technical Grade-'C' and the DPC recommended the promotion of Shri Venugopal and Shri Prabhudas for promotion to Technical Grade-'C' and did not recommend his name for promotion and he did not protest in writing regarding the promotion of Shri Venugopal and Shri Prabhudas and in the year 2008, the union for the first time raised the dispute.

6. The witness examined on behalf of the Party No. 1 has also reiterated the facts mentioned in the written statement by Party No. 1, in his evidence on affidavit. In his cross-examination, the witness for the Party No. 1 has stated that the initial date of appointment of Venugopal Kusuma is 21.12.1992 and Prabhudas is 09.12.1992 and as per document W-XIII, Kusuma and Prabhudas were regularized as Clerk Grade-III, vide order dated 16/17.03.1994 from the post of General Mazdoor and as per office order No. 1379, Kusuma and Prabhudas were regularized as Clerk Grade-II w.e.f. 01.01.1995.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed on 12.04.1989, as operator trainee and after the training was completed, he was placed in Cat. II, w.e.f. 15.05.1990 and he was deployed to work as Loading In-charge of Pandhar Rly. Siding and such fact is proved by the document, W-II and the workman was duly appointed by the Sub Area Manager as Loading In-charge, but the workman was kept in Cat-II and he was allowed officiating allowance of Asstt. Loading Clerk, Grade-III from 15.05.1992 and he was promoted/regularized as Clerk Grade-III w.e.f. 15.05.1993 and the workman was entitled for promotion, above Venugopal Kusuma and M. Prabhudas, in view of the seniority list, Ext. M-IV (Annexure-F) filed by management, in which the name of the workman is at serial No. 8, whereas, names of Kusuma and Prabhudas are at serial No. 9 and 10 respectively and Kusuma, Prabhudas and so also other workers, who had been given promotion earlier to the workman were not eligible for entry into Loading Clerk Grade-III and the workman has been victimized and Party No. 1 has adopted unfair labour practice and the workman is entitled for the reliefs as claimed.

It was also submitted by the learned advocate for the workman that when the reference has been made by the appropriate Government the Tribunal is required to adjudicate the same and the law of limitation does not apply to the proceedings under the Act and the Tribunal cannot travel outside the terms of reference and is bound to adjudicate the dispute limited to the points of reference.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 2001 AIR SCW-2685 (Sapan Kumar Pandit Vs. U.P. State Electricity Board), AIR 1994 SC 853 (S.P. Chengal Varaya Naidu Vs. Jagannath), AIR 1968 SC 1413 (Gopal K. Ketkar Vs. Md. Haji Latif), AIR 1986 SC 132 (H.D. Singh Vs. RBI), 2007 (115) FLR 427 (Mehan Mahato Vs. M/s. Central Coalfields Ltd.) and AIR 2000 SC 469 (National Engineering Industries Ltd. Vs. State of Rajasthan).

8. On the other hand, the learned advocate for the Party No. 1 in his argument, reiterated the stands taken by the Party No. 1 in the written statement, including the validity and maintainability of the reference on the grounds that the reference is vague and the claim raise by the union on behalf of the workman is a state claim and no industrial dispute was in existence at the time of making the reference.

9. Keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions cited by the learned advocate for the workman, the present case in hand is to be considered. However, at this juncture, I think it appropriate to mention that out of the decisions cited by the learned advocate for the workman, the decisions reported in AIR 1994 SC 853 (Supra), AIR 1968 SC 1418 (Supra) and AIR 1986 132 (Supra) and regarding production of documents and withholding of vital documents relevant to litigation, by a party. As in this case there is no material to show that the Party No. 1 has not produced any relevant document or withheld any vital document relevant to the litigation, with respect, I am of the view that the said decisions have no direct application to the case in hand.

10. So far the first contention raised by the learned advocate for the Party No. 1 regarding the non-maintainability of the reference due to vagueness of the schedule of reference is concerned, admittedly the designation of the employee, the post of which right to seniority and merit was ignored and the date from which the benefit deemed to be accrued are not mentioned in the schedule of reference. However, in the statement of claim such facts have been given by the union. Hence, it is found that there is no force in the contentions raised by the learned advocate for the Party No. 1.

11. The next contention raised by the learned advocate for the Party No. 1 is in regard to raising of the dispute belatedly by the union, without any explanation. In this regard, I think it proper to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in 2001 AIR SCW 2685 (Supra), which has been

cited by the learned advocate for the workman. The Hon'ble Apex Court have held that:—

> "There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workman or the union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, for making the adjudication could be considered by the adjudicating authorities, while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

As in the case in hand, the Government has made the reference, it can be presumed that in the opinion of the Government, there existed the industrial dispute on the date of reference. However, it is found from the materials on record that there is inordinate delay of about sixteen years in raising the dispute and such delay has not been explained either by the union or the workman. Applying the principles enunciated by the Hon'ble Apex Court in the judgment reported in 2001 AIR SCW 2685 (Supra), the delay in raising this industrial dispute will be taken into consideration, in case of grant of reliefs to the workman on consideration of the facts and circumstances of the case.

12. The first claim made by the union on behalf of the workman is that soon after the completion of the training by the workman he was placed in Category-II w.e.f. 15.05.1990 and due to acute exigencies of job, Party No. 1 placed him to supervise one of the shifts of loading of coal at Pander Pawani Railway Siding and the document W-II, the letter No. WCL/BA/SAM/SSA/1752 dated 27/28.10.1998, Sasti Sub Area amply proves the said fact and as the workman performed the duty of Asstt. Loading Inspector/Asstt. Loading Superintendent as per cadre scheme for Loading Personnel, he was entitled to be put in Technical and Supervisory Grade 'C' and paid accordingly from the date he was placed on such duty, but Party No. 1 by adopting unfair labour practice and did not pay him wages of T&S Grade 'C' and allowed officiating allowance of Clerical Grade-III w.e.f. 15.02.1992.

It is well settled and so also the stand taken by the union in the rejoinder that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto and the Tribunal cannot go beyond the terms of reference.

On perusal of the terms of reference of the case in hand, it is found that the first claim raised by the union as mentioned above has not been referred for adjudication and on that score, the same cannot be considered or adjudicated.

However, on perusal of the materials on record including the evidence produced by the parties, it is found that the union and so also the workman has failed to prove that the workman worked as an Asstt. Loading Inspector/Astt. Loading supdtt., Grade 'C' w.e.f. 27/28.10.1990. The document, W-II filed by the union instead of supporting the claim raised by the union falsifies the same. On perusal of the letter, W-II, it is found that the same is a letter addressed by the Sub Area Manager, Sasti Sub Area dated 27/28.10.1990 to Shri Narayan Agnu, the In-charge of Pander Pawani Siding for loading of the wagons as per the decision of the committee constituted for the same. The said letter was not addressed to the workman as the Siding-in-charge or Shift-In-charge. Rather, copy of the said letter was given to the workman and three others, who were working as clerks to ensure correct loading. The workman in his cross-examination has also admitted that the copy of the said letter was given to him as a clerk. Hence, it is found that the first claim made by the union is not tenable.

13. The next claim made by the union on behalf of the workman is that Shri M. Prabhudas, Shri Venugopal Kusuma and Shri Atul Dewalkar, who belonged to Ministerial Staff (General Cadre) and much juniors to him were brought to Loading Personnel Cadre illegally and were given promotion as Asstt. Loading Inspector in Grade w.e.f. 01.01.1998, 01.01.1998 and 01.07.1998 respectively, whereas, the workman was promoted to the said post w.e.f 25-03-2002 and Shri Prabhudas and Shri Venugopal were again promoted to Grade - 'B' from Grade 'C' vide order dated 14.10.2005 ignoring the seniority of the workman and Sarbeshree B.W. Ghomase, M.D. Bhagat, David Kampelli, A.G. Dewalkar and B.S. Pade were promoted to Grade - 'B' from Grade 'C' w.e.f. 15.10.2007, even though the name of the workman was recommended for promotion by the DPC and as such, the workman is entitled for the reliefs as claimed.

The Party No. 1's case is that the workman was given promotions as per rules by taking into consideration about his merit & seniority and the workman did not raise any objection to the transfer of Shri Prabhudas and Shri Venugopal and their categorization and promotion, at any point of time and so also the promotion of others and as an afterthought, the dispute was raised in 2008 by the union and as there was no illegality in the promotion of Shri Prabhudas and Shri Venugopal or the other workers, the workman is not entitled of any relief.

14. The workman has claimed the document, Ext. M.IV (annedure-F) as a seniority list and according to him, his name was at serial no. 8 in the said list, where as the names of Shri Prabhudas and Shri Venugopal were below him. However, on perusal of Ext. M-IV, it is found that the same is not a seniority list, but the same is an office order regarding the redesignation of the workman and eleven others and in the said list, names of Prabhudas and Venugopal are not there. So, the claim of the workman in that regard is found to be not correct.

On perusal of the documents, including Ext. M-III, M-VI, M-VII, M-XI, M-XII and MXIII, it is found that the workman became eligible for job rate clerical grade III on 15.05.1992 and he was re-designated as Asst. loading/weight bridge clerk as per the order, Ext. M-IV and he was regularized as clerk grade III w.e.f 15.05.1993 and he was promoted to loading clerk grade II w.e.f 01.07.1997 and as Asst. Inspector grade C w.e.f. 25.03.2002, whereas, Shri M. Prabhudas and Shir Venugopal Kusuma were transferred to Sasti Sub-Area from Gouri sub-Area as clerk grade II, vide office order dated 07.12.1996 and they were designated as clerk grade II performing the job of loading clerk, as per order dated 14/ 15.03.1997. The workman did not raise any objection or protest either to the transfer of the said two employee or their designation or even their promotions. The workman did not protest about the promotion of the other employees, whose names have been mentioned in the statement of claim. Though, the union has mentioned in the statement of claim. Though, the union has mentioned in the statement of claim that the workman was all-along was protesting the denial of promotion to him, not a single document has been filed in support of such claim. Hence, it can be held that there was never any protest from the side of the workman prior to 23.10.2007. It is also found from the record that the workman accepted all his promotion without any objection. It is also found from the record that the made of promotion to the post of clerical grade II onwards in the cadre of loading personnel is on the recommendation of the D.P.C. It is also clear from the materials on record that the workman was not recommended for promotion, when Shri Prabhudas and Shri Venugopal were promoted as Asst. Loading Inspector grade C on the recommendation of the D.P.C. The said two employees were already in clerical grade II, doing loading work, prior to the promotion of the workman as loading clerk grade II. It was the same case in respect of Shri Atul Dewalkar, as according to the own pleading of the union, Shri Dewalkar was promoted as Loading Clerk Grade - II on 01.01.1995. In absence of the particulars of the other employees named in the statement of claim, it cannot be said that they were juniors to the workman or that their promotion was illegal. It is clear from the materials on record that the workman was given promotions on the due dates by Party No. 1 by taking into consideration his merits and seniority and he was not superseded by his juniors and he is not entitled for the reliefs claimed.

15. It is necessary to mention here that at the time of argument, it was submitted by the learned advocate for the workman that the name of the workman was recommended by the DPC for promotion to (T&S), Grade - 'B', but Party No. 1 did not give promotion to him on the ground of pending of the case before this Tribunal, which is illegal.

On perusal of the documents, it is found that the name of the workman has been recommended by the DPC for promotion to the post of (T&S) Grade - 'B' and on the recommendation of the DPC, two other employee Shri M.G. More and Shri Haridas Dhale have been promoted to (T&S), Grade - 'B' on 28.02.2012. So, in the interest of justice, the Party No. 1 is directed to give promotion to the workman to (T&S) Grade - 'B' from the date Shri M.G. More and Shri Haridas Dhale have been promoted. Hence, it is orderd:

ORDER

The reference is answered in the negative and against the workman. The workman in not entitled to any other relief except the relief mentioned in paragraph 15 of the award.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2044.—औद्योगिक विवाद अधिनियम, 1947 (1947 कर 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 24/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार के 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/85/2003-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2044.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award Ref. No. 24/2006 of the Central Government Industrial Tribunal-cun-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workman, received by the Central Governmenet on 02.09.2013

[No. L-22012/85/2003-IR(CM-II)]

B.M. PATNAIK, Deck Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/24/2006 Date: 03.05.2013

Party No. 1(a) : The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tab-Chimur,
Distt. Chandrapur (MS)

(b): M/s. Singh & Sons,
WCL Contractor, Singhnagar,
Dahegaon,
Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No. 2: Shri Bhaurao S/o Purushottam Bawane
R/o. Minzhari, Post: Khadsangi,
Teh.-Chimur, Distt. Chandrapur,
Maharashtra.

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Bhaurao Purushottam Bawane, for adjudication, as per letter No. L-22012/85/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

> "Whether the action of the management of WCL and M/s. Singh and Sons Contractor of WCL in terminating the services of Shri Bhaurao S/o Purushottam Bawane is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Bhaurao Purushottam Bawane ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No. 1 (a) i.e. Sub-Area Manager, Murpar Project and Party No.1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No. 1(a) also engaged Party No. 1 (b), M/s. Singh & Sons in its work w.e.f. 05.01.1997 and till Party No. 1 (b) is working with Party No. 1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L. as a General Mazdoor on 10.06.1993 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No. 1 (b) w.e.f. 01.01.1997 continuously till 28.12.2001 and Party No.1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of Party No. 1(a) and Party No. 1(a) is the principal employer and his appointment by both the contractors was oral and the Party No. 1 (b) terminated his services orally w.e.f. 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no. 1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no. 1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no. 1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as Party No. 1 was the principal employer and Party No. 1(b) was the contractor of Party No. 1 (a), for each and every act of the Party No. 1 (b), the Party No. 1(a) was responsible and as such, the Party No. 1(a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No. 1 (a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No. 1(b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded *inter-alia* that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of

3½ months and the incline shaft drivage within eight months and it also awarded another contract to Party No. 1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No. 1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it (Party No. 1(a)) was related to Party No. 1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the Party No. 1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No. 1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti (2006 (2) SCALE 115) and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No. 1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No. 1(b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar Colliery by Party No. 1(a) and BGML engaged him from 10.06.1993 to 02.07.1996 as a General Mazdoor and that he was again engaged by Party No. 1(b), another contractor from 01.01.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No. 1(a). The only claim of the workman is that Party No. 1(a) had sent him for vocational training and he had under gone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No. 1(a), as because, he was sent for vocational training by Party No. 1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No. 1(a) and he was employed by the contractors and the Party No. 1(a) was not controlling or supervising the work of the workman. It is the definite

stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No. 1(b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Honble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:—

> "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

> "Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)-Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, *i.e.* the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that:

> "Industrial Disputes Act (14 of 1947- S. 25-F, 10-Retrenchment compensation-Termination of services without payment of -Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management-Onus lies upon workman to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2045.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 25/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं. एल-22012/86/2003-आईआर(सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2045.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 25/2006) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/86/2003- IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/25/2006 Date: 03.05.2013

Party No.1(a) : The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b): M/s. Singh & Sons,
WCL Contractor, Singhnagar,
Dahegaon,
Chhindwara Road, Distt. Nagpur(MS)

Versus

Party No. 2: Shri Manik S/o Bisan Dodake
R/o. Murpar, Post: Khadsangi,
Teh.-Chimur, Distt. Chandrapur
Maharashtra.

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Manik Bisan Dodake, for adjudication, as per letter No. L-22012/86/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

> "Whether the action of the management of WCL and M/s. Singh as Sons Contractor of WCL in terminating the services of Shri Manik S/o Bisan Dodake is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Manik Bisan Dodake, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No. 1 (a) *i.e.* Sub-Area Manager, Murpar Project and Party No. 1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No.1(a) also engaged Party No. 1 (b), M/s. Singh & Sons in its work *w.e.f.* 05.01.1997 and till Party No.1 (b) is working with Party No. 1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L as a Surface Tramer on 16.03.1994 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No. 1 (b) w.e.f. 03.02.1998 continuously till 28.12.2001 and Party No. 1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of Party No. 1 (a) and Party No. 1(a) is the principal employer and his appointment by both the contractors was oral and the Party No. 1(b) terminated his services orally w.e.f. 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no. 1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no. 1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination

of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the Parties No. 1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December, 2001 was not paid to him and as Party No. 1 was the principal employer and Party No. 1(b) was the contractor of Party No.1 (a), for each and every act of the Party No. 1(b), the Party No. 1(a) was responsible and as such, the Party No. 1(a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No. 1(a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No. 1(b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded *inter-alia* that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3 1/2 months and the incline shaft drivage within eight months and it also awarded another contract to Party No.1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No. 1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it (Party No. 1(a)) was related to Party No. 1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the Party No. 1(a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No. 1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka *Vs.* Umadevi, Union Public Service Commission *Vs.* Girish Jayanti (2006 (2) SCALE 115) and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No. 1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No. 1(b), as they were of having different legal entities—and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar Colliery by Party No. 1(a) and BGML engaged him from 16.03.1994 to 02.07.1996 as a Surface Tramer and that he was again engaged by Party No. 1(b), another contractor from 03.02.1998 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No. 1(a). The only claim of the workman is that Party No. 1(a) had sent him for vocational training and he had under gone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such

vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No. 1(a), as because, he was sent for vocational training by Party No. 1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No. 1(a) and he was employed by the contractors and the Party No. 1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No. 1 (b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery *Vs.* Their workmen) have held that:—

> "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25-B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal *Vs.* M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

> "Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service—Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, *i.e.* the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay *Vs.* Rajeev Kumar) has held that:—

> "Industrial Disputes Act (14 of 1947-S.25-F, 10-Retrenchment compensation—Termination of services without payment of -Dispute referred to Tribunal—Case of workman/workman that he had worked for 240 days in a year preceding his termination—Claim denied by management—Onus lies upon workman to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2046.—औद्योगिक विवाद अधिनियम, 1947 (**1947** का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. बी एन पी परीबस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 38/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2/09/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/135/2006-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2046.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. *38/2007)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Mumbai as shown in the Annexure, in the industrial disputes between the management of M/s. BNP Paribas, and their workmen, received by the Central Government on *02/09/2013*.

[No.L-12012/135/2006-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT

K.B. Katake

Presiding Officer

Reference No. CGIT-2/38 of 2007

Employers in relation to the management of

M/S. BNP PARIBAS, Mumbai

The Chief Executive Officer &
Country Manager/Secretary General
M/s.BNP Paribas
French Bank Building
62, Homji Street
Fort Mumbai 400 001.

AND

THEIR WORKMEN.

The President
Shramik Mahasangh
180-C, 1st floor
Dharavi Koliwada
J.J. Keni Lane
Dharavi Road
Mumbai 400 1017

APPEARANCES:

For the Employer : Mr. R.N. Shah, Advocate.

For the workmen : Ms. Ketki Rege, Advocate.

Mumbai, dated the 11th March, 2013.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/135/2006-IR (B-I), dated 16.08.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the demand of the union Shramik Mahasangh for reinstatement of Shri Uday Gajanan Mhatre in service of M/s BNP Paribas, Mumbai, with full back wages and continuity of service w.e.f. 07/12/2001 is legal, proper and justified? If so, to what relief Shri Uday Gajanan Mhatre is entitled and from which date?"

2. After receipt of the reference notices were issued to both the parties. In response to the notice the second

party union filed their statement of claim at Ex-4. According to them, the workman Mr. Mhatre was employed by the first party management since October, 1996. He was orally appointed by the first party. To conceal the employer-emplyee relationship he was initially shown on paper as a smoke-screen as employed through so called courier agency namely mail order, marketing service. Since June, 1999 he was shown as employee of another courier, *i.e.* M/s. Tawde couriers. All his wages were paid against vouchers. From 13/6/2000 till 7/12/2001 his wages were paid in cash against vouchers directly by the Bank. All the vouchers are lying with the Bank. He was empolyed by Bank and doing the work of the Bank. He used to sign on behalf of the Bank.

His services were illegally terminated from 7/12/2001. He made various representations to the Higher Authority and management. However they did not give any response. Therefore the workman through union approached the ALC © who called the management and made at attempt of conciliation. As conciliation failed on the report of ALC, © the Union Labour Ministry sent the reference to this Tribunal. The union therefore prays that, he be reinstated in the service with full back wages with interest thereon at commercial rate *w.e.f.* 7/12/2001 and continuity service.

3. The first party resisted the statement of claim of the union *vide* its written statement at Ex-7. According to them the reference is not tenable. It is mis-conceived and malafied and not maintainable in the eye of law. They contended that, the reference is made at a belated stage after a delay of 5 years. Therefore it suffers by principles of delay and laches. The second party workman was never employed or recruited by the management. On the other hand he was employee of a courier service agency. Initially he was working for Mail Order Marketing Services during the period from Oct, 1996 to June, 1999 and used to visit the establishment of first party either for delivery or receiving the communication from the first party. Since June, 1999 first party discontinued the services of Mail Order Marketing Services and entered into courier service contract with M/s. Tawde Courier Services. The workman concerned thereafter joint M/s. Tawde Courier Services and was doing the work of Tawde Courier Services. As he was not employee of the first party, the industrial dispute is not tenable. There was no vacant post and the workman was never recruited by the Bank. He was working with the Bank till December, 2001. Since December, 2001 M/s Tawde Courier Services informed the Bank that it has decided to change the work of place of the workman and their three other employees who were doing the courier work of the first party. Since then workman did not report the office of the first party or to M/s. Tawde Courier. He falsely wrote letters alleging that he was performing duty for the first party and requested for regularisation of his services. The first party immediately informed him that he was employee of courier services and at no point of time he was employed by the first party and there is no post in the establishment. According to them the courier service agency M/s. Tawde Courier is necessary party to the reference. Therefore reference is bad for want of necessary party. They have denied all the contents in the statement of claim and contended that, as the second party workman was not their employee, the reference is not tenable and submitted that he is not entitled to any relief. Therefore they pray that the reference be rejected with cost.

4. The workman has filed his rejoinder at Ex-8. He denied the contents raised in the written statement and reiterated the points raised in his statement of claim.

5. Following are the issues re-casted for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Does second party prove his relation with first party as employee	Yes.
2.	Does first party prove that Government cannot make reference on the subject matter?	No.
3.	Does it further prove that second party union has no *locus standi* to raise dispute?	No.
4.	Does it prove that second party is a contract worker and not its employee?	No.
5.	Whether non-impleading M/s. Tawde Courier effects on claim of second party?	No.
6.	Does he prove that contract is sham and bogus?	Yes.
7.	Is second party entitled for relief sought?	Partly in the affirmative.

REASONS

Issues nos. 1, 4 & 6

6. These issues are interlinked, therefore in order to avoid repetition of discussion they are discussed and decided simultaneously. It is the case of the second party that he is employee of first party and was performing the work of the first party whereas it is the case of the first party that second party is not their employee. On the other hand he is employee of independent contractor. Therefore no industrial dispute arises. The second party claimed that the so called contract is sham, bogus and mere camouflage to deprive the workman from getting the benefits of permanent employee. From these pleadings my Id. predecessor has framed the aforesaid three issues.

7. In this respect the first party Bank has examined their witness Mr. George Rodrigues who has deposed at Ex-19. According to him the second party is employee of M/s. Tawde Courier Services. There was service contract entered into with M/s. Tawde Courier Services. According to him initially the second party was employee of Mail

Order Marketing Services from October, 1996 to June, 1999 with whom Bank had entered into service contract. According to the first party the second party was working with them as employee of the contractor Mail Order Marketing Services from 1996 to June, 1999. According to them since June 1999 they have entered into service contract with M/s. Tawde Courier Services. According to them workman left his job with Mail Order Marketing Services and joined M/s. Tawde Courier Services and working with the Bank. According to them in December 2001 M/s. Tawde Courier Services decided to change the workplace of the workman concerned and their three other employees. Thereafter the second party stopped attending the duty and approached the first party and claimed that, he is their employee. The first party replied to his letter and explained that he has no concern with the first party. In support of their contention the first party has examined one more witness Shri Surendra Jagannath Tawde (Ex-33) who was proprietor of M/s. Tawde Courier Services till 2004. In his affidavit he says that, there was courier agreement between Tawde Courier Services and the first party Bank *w.e.f.* 24/06/1999 to June 2000 and subsequently it was renewed from time to time. In his chief he has supported the case of the first party. In his cross examination this witness says that, appointment letters were not given to these employees. He further says that they used to maintain attendance registers of these employees and used to pay salary by cash and used to obtain signature on the salary register. However neither the attendance register nor the salary register is produced on record. They have produced on record the courier agreement at Ex-20. They have produced on record the o/c of the letter correspondence with Tawde Courier at Ex-24, 25 & 27 to 29. However these documents are not sufficient to show that the second party was the employee of Tawde Courier Services.

8. In this respect the Id. adv for the second party submitted that the contracts between the courier service agencies are sham, bogus, and mere camouflage to deprive the workman from his legitimate rights. She further pointed out that it is not disputed that the workman was working for the first party Bank from 1996 up to December, 2001 continously. According to the Id. Adv. initially Mail Order Marketing Services Agency was shown as contractor till June, 1999. Thereafter the Bank has shown M/s. Tawde Courier Services as the contractor. However the workman is the same person who was working for the Bank. The version of the Bank is thus unacceptable that, Mr. Mhatre left the Job of Mail Order Marketing Services and joined the services of Tawade Couriers. It indicates that the first party had changed the contractor however the same workman continued to work for them. It shows the contract was a mere papar work. In support of his contention the Ld Adv. for the second party further pointed out that, the Bank had issued letters to RBI and State Bank of India and other banks that, second party Mr. Uday Mhatre is their representative and they should hand over the cheques and other correspondence of the Bank to him. Fact is not disputed that at the instance of the first party RBI had issued pass to the first party. The second party has produced copies of number of letters correspondence issued by the first party to various Banks to handover their correspondence to the workman Mr. Uday Mhatre. They have also issued letter to Manager RBI to issue quarterly pass to Mr. Uday Mhatre for all Banking transactions. Accordingly RBI had also issued pass in the name of the workman. Copies thereof are on record with list Ex-11. It indicates that the workman was doing the work for the first party of collecting cheques and other correspondence from various banks including RBI and SBI. He also used to carry correspondence and cheques of the first party and used to deliver to the concerned officers. In this respect the Id. adv. pointed out that MW-1 Mr. George Rodrigues had admitted in his cross that, Bank official used to give directions to the second party worker in respect of delivery of the documents he used to collect from the Bank. He has also admitted that the workman used to come daily to their Bank. He used to sit across a table and used to sort out the leters and used to go. The Id. adv. in this respect pointed out that the workman was working continuously since 1996 to December, 2001. Every time contractors were changed and the workman was same. He was under direct control of officials of the Bank. It indicates that he was employee of the Bank and not of the contractor. In support of her argument the Id. adv. resorted to Apex Court ruling in Hindalco Industries Ltd. *V/s.* Association of Engineering Workers 2008 I CLR 1023. Facts in that case are identical to the case in hand, *i.e.* the canteen employees therin were continued despite change of canteen contractors. The employees were under the ultimate control of the management. In the circumstances, Hon'ble Court observed that;

> "The industrial Court is perfectly right in arriving the conclusion that the evidence coupled with the term of agreement show that the contract is nothing but paper agreement."

9. In this case also the worker is shown as contract worker merely to avoid the responsibility and to deprive him from getting the benefit of permanency. It amount to exploitation of the poor class. In a recent Apex Court ruling Hon'ble Court has condemned such type of exploitation of the poor workmen by showing them as daily wager or contract workers. The Hon'ble Court has also taken into consideration the globalized welfare of the workmen and various labour welfare legislations. In Bhilwara Dugdh Udpadak Sahakari S. Ltd. *V/s.* Vinod Kumar Sharma & Ors. 2011 III CLR 386 the Hon'ble Apex Court in respect of exploitation in the name of so called contract labourers or daily wagers observed that;

> "This appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country. In order to avoid their liability under various labour statute employers are every often resorting to subterfuge by trying

to show that their employees are in-fact the employees of a contractor. It is high time that this subterfuge must come to an end. Labour statutes were meant to protect the employees/ workmen because it was realised that the employer and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees."

In this respect Hon'ble Court further observed that;

"This Court cannot countenance such practices anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers."

10. In the light of the above rulings and fact and circumstances on record I am convinced that the workman was an employee of the first party. He was working continuously though the contractor was changed. Furthermore he was working under the direct control of the officers of the first party. The work of collection of cheques and correspondence from various banks as well sorting out the cheques and correspondence of other banks and giving delivery thereof to the respective banks is perennial type of work. The workman was performing the same work continuously since Oct. 1996 up to Dec. 2001. These facts as discussed above are sufficient to arrive me at the conclusion that the contract was sham and bogus and the workman was not the employee of the contractors. On the other hand he was an employee of the first party Bank and there exists employee-employer relationship between them. Accordingly I decide these issues nos. 1 & 6 in the affirmative, and issue no. 4 in the negative.

Issue no. 2

11. The Id. adv for the first party in this respect submitted that the Government erred in making the reference. According to them as there was no employee-employer relationship between the concerned workman and the first party, therefore no industrial dispute arises. In support of his argument the Id. adv. resorted to Apex Court ruling in Secretary Indian Tea Association V/s. Ajit Kumar Barat and Ors. 2000 I LLJ 809 wherein in para 11of the judgement Hon'ble Court observed that;

"Respondent no. 1 has not been able to show that while passing the above administrative order State Government took into consideration any irrelevant or foreign matter. We therefore hold that above administrative order was passed by the State Government after taking into consideration material available on record and it could not be faulted."

In this judgement the Hon'ble Court has referred its earlier decision in Abad Dairy Dudh Vikram Kendre Sanchalak Mandal. V/s Abad Dairy & Ors. 1993 III LLJ (Supplement) 855 wherein the Hon'ble Court on the point observed that;

"This issue requires detailed examination and can be satisfactorily adjudicated upon only by Tribunal."

12. In short the Government is not expected to make detail inquiry while making reference and the administrative order can be passed on the basis of material before the Government concerned. In the case at hand the second party workman has contended that he is employee of the first party and the contract is sham and bogus. That suffices the purpose to make the reference by the Government to adjudicate whether his termination is fair and proper. In this respect the Id. Adv. for the first party also resorted to another Apex Court ruling in M/s. Hochtief Gammon V/s. State or Orissa and Ors. 1975 LAB IC 1608 wherein in respect of the order passed or deicsion taken by executive, the Hon'ble court observed that;

"The executives have to reach their decisions by taking into account relevant consideration. They should not refuse to consider relevant matter nor should they taken into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law."

However this ruling also does not extend any help to the first party as it lays down the limitation of the executive. In the case at hand the order of the Government is well within the limits and guidelines given by the Hon'ble Court.

13. Furthermore in this respect I would also like to point out that, the Government had initially refused to make the reference. This reference is made as per the direction of Hon'ble High Court in WP no. 353 of 2007. Furthercome I would also like to point out that is the above discussed issues nos. 1,4,6, it is held that, there in employee-employer relationship between the parties and the contract is found to be sham and bogus. The said point is adjudicated by the Tribunal which is the base of the reference. The Government was not empowered to adjudicate these issues. In this case the employee-employer relation is established. In the circumstances the order of Government making reference cannot be faulted. Accordingly I decide this issue no. 2 in the negative.

Issue no. 3

14. It is the case of the first party that, the second party union is neither a majority union nor there are members from the first party Bank. According to it, there is

another union by name French Bank Employees Union functioning for the employees of the first party and the first party had entered into various settlements with the said union. Therefore it is contended on behalf of the first party that Shramik Mahasangh cannot espouse this dispute. In this respect it is rightly pointed by the Ld. Adv. for the second party that in this matter it is case of illegal termination claimed by the second party. In the circumstances u/s 11-A of the I.D. Act 1947 even individual workman without the help of union can raise the industrial dispute. In the circumstances the objection raised on behalf of the first party is found to be devoid of merit. The second party union or even workman can very well espouse the dispute as it is related to termination of services of the workman. Accordingly I decide this issue no 3. in the negative.

Issue no. 5

15. In this respect it is submitted on behalf of the first paty that lastly the workman was the employee of M/s. Tawde Courier Services Agency and he used to work with the first party as employee of M/s. Tawde Courier Services. Therefore accordingly to the first party, M/s. Tawde Courier services is the necesssary party to the reference. In this respect the Id. adv. for the second party pointed out that in the statement of claim, second party has pleaded that he was employee of the first party and contract with M/s. Tawde Courier Agency and other agencies were sham and bogus. In the circumstances according to the second party M/s. Tawde Couriers has no concern to implead as a party. Therefore the said agency need not be a party to the dispute.

According to the Ld. adv. for the second party the reference can be adjudicated effectively without making the courier agency as a party to the dispute. Furthermore the courier agency has not concerned with the dispute. On the other hand it is submitted that if at all first paty want to rely upon their pleading in the written statement, they may call the concerned person from M/s. Tawde Courier services as their witness. I do agree with the submission of the second party that the reference can be adjudicated effectively without making M/s. Tawde Courier as party to the reference. Therefore it is not necessary party to the reference. Accordingly I decide this issue no. 5 in the negative that the reference is not hit by the principle of non-joinder of necessary parties.

Issue no. 7

16. In the light of findings on issues no. 1,4, & 6 it is clear that the second party has established that workman is the employee of the first party. It is also held that there exists employee-employer relationship between workman with the first party. The contract is also held to be sham and bogus. In the circumstances the workman is enttitled to be reinstated in the service of the Bank as a sub-staff.

17. In resepct of back wages the Id. adv. for the first party submitted that, the second party is not all working with the first party since December, 2001. It is further submitted that the second party has raised the dispute after a period of 5 years and he must be working earning. The Id. adv. further submitted that 'no work no wages' is the settled principle of law. In this back drop he submitted that the second party is not entitled to any back wages. In this respect it was submitted on behalf of the second party that, he is victim of unfair labour practice adopted by the first party. He was illegally terminated from the services. Due to his illegal termination he and his family suffered a lot. He is not employed anywhere since the date of his termination. Therefore, it is submitted that the workman is entitled to full back wages. After giving conscious thought to the submissions of both the parties I am of the opinion that awarding full back wages without performing any work would put necessary financial burden on the first party. At the same time I also take into consideration that the second party is a very poor person serving for about four years at a meagre pay of Rs. 3000/- p.m. He was shown as a contract worker merely be avoid the liability of paying him pay and allowances as like regular employees. Furthermore I would also like to consider the fact that, the workman is not employed anywhere and had suffered a lot due to his illegal termination. I also consider the fact that there is about five years delay in raising the dispute. The workman is not entitled to any back wages for the said period of delay of 5 years. In the circumstances to meet the ends of justice I think to award 25% back wages excluding the period of delay 5 years. Accordingly I decide this issue no. 7 that the workman is entitled to be reinstated in the service as sub staff with 25% back wages, excluding the period of delay. Thus I proceed to pass the following order:

ORDER

The reference is partly allowed with no order as to cost.

(i) The second party workman is declared to be employee of first party and the service contract is declared to be sham and bogus.

(ii) The termination of services of the workman is declared as illegal.

(iii) The first party is directed to reinstate the second party workman forthwith with 25% back wages (excluding the period of delay of 5 years in making refer

ence) with continuity of service.

(iv) The first party shall pay to the second party workman arrears of back wages arrears and other allowances and benefits at par with the regular employees.

Date: 11.03.2013

K.B. KATAKE, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2047.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 28/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-20012/16/2007-आईआर (सीएम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2047.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 02/09/2013.

[No. L-20012/16/2007-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 28 OF 2007

Parties :	Secretary Bihar Pradesh Colliery Mazdoor Congress, Bishunpur, Dhanbad *Vs.*, General Manager, Mugma area of M/s. BCCL, Dhanbad
On behalf of the workman :	Mr. U.P. Sinha, Ld. advocate
On behalf of the Management :	Mr. D.K. Verma, Ld. Advocate
State :	Jharkhand Industry : Coal

Dhanbad, Dated the 1st Aug., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/16/2007-IR (CM-I) dt. 03.05.2007

SCHEDULE

"Whether the action of the management of Hariajam Colliery of M/s. ECL in not referring Shri Mansha Manjhi, Wagon Loader to the Apex Medical Board for assessment of his correct age is justified and legal? If not, to what relief is he concerned workman entitled."

2. Mr. U.P. Sinha, the Ld. Advocate for the Union is present but no workman Mansha Manjhi, the W/Loader appeared nor any witness for the evidence of the workman produced. Mr. D.K. Verma, the Ld. advocate for the O.P./ Management is present. Mr. Sinha, the Ld. advocate for the Union/workman has urged for a needful order, as no workman appears to be interested in proceeding with the case, despite his solid steps for proceeding.

On going through the case record, I find that the case has been pending for the evidence of the workman since 27.8.2012, for which Regd. Notice dt. 8.3.2013 was issued to the Secretary of the Union concerned. The present reference relates to a matter of not referring the workman to the Apex Medical Board for assessment of his correct age. In view of the submission of the Mr. Sinha, the Ld. Counsel for the Union and the present status of the case, the conduct of the workman appears to be his unwillingliness to proceed with the case.

In result the case is closed as no industrial dispute and accordingly it is passed an order.

KISHORI RAM, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2048.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **ईसीएल** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 16/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-20012/10/2007-आईआर (सीएम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2048.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of The General Manager,

and their workmen, received by the Central Government on 02/09/2013.

[No. L-20012/10/2007-IR (CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 16 OF 2007.

Parties : Secretary

Bihar Pradesh Colliery Mazdoor Congress, Bishunpur, Dhanbad *Vs.*, General Manager, Mugma area of M/s. BCCL, Dhanbad

On behalf of the workman : Mr. U.P. Sinha, Ld. advocate

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dhanbad, Dated the 1st Aug., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/10/2007-IR (CM-I) dt. 11.04.2007

SCHEDULE

"Whether the action of the management of Chapapur Colliery of M/s. ECL in superannuating Shri Pran Manjhi Mazdoor *w.e.f.* 1.7.2006 is justified and legal? If not, to what relief is the concerned workman entitled."

2. Mr. U.P. Sinha, the Ld. Advocate for the Union/workman is present but no workman Pran Masjhi, Timber Mazdoor, appeared nor any rejoinder on his behalf filed nor any document on his behalf. Mr. D.K. Verma, the Ld. Advocate for the O.P./Management is present. Mr. Sinha, the Ld. Advocate for the Union submits that the workman is not appearing for proceeding with the case despite his best effort; as such he apperars to be disinterested in his case.

On perusal of the case record, I find that the case has been pending since 3.12.2012 for filling rejoinder of the workman. The workman by his conduct clearly appears to be not interested to contest his case, which is related to an issue about his superannuation *w.e.f.* 1.7.2006.

Hence, the case is closed as no Industrial dispute existent; and accordingly it is passed an order/Award of no dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2049.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 119 of 1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-20012/11/1991-आई आर (सीएम-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2049.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 119/1991) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL, and their workmen, received by the Central Government on 02/09/2013.

[No. L-20012/11/1991 - IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT :

Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE No. 119 OF 1991.

Parties : Vice President, C.C.L. Colliery Karmchari Sangh, Toppa, Hazaribagh *Vs.* Project Officer, Ara Colliery of M/s. C.C.L. Kuju, Hazaribagh

APPEARANCES:

On behalf of the workman/Union : Mr. Chandrika Prasad, Ld. Advocate

On behalf of the
Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated : Dhanbad, the 29th July, 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/11/91-IR (Coal-I).

SCHEDULE

"Whether the action of the management of Ara Colliery of M/s. C.C.L., P.O. Kuju, Dist. Hazaribagh by not allowing to resume duty to Sh. Jagnath Nayak, Wagon Loader of Chainpur Siding Ara Colliery and not making payment to his legal dues is justified? If not, to what relief the workman concerned is entitled to?"

2. The case of the C.C.L. Colliery Karmchari Sangh, Topa, Hazaribagh, for workman Jagnath Nayak is that the workman was working as wagon loader at Chainpur Siding at Ara Colliery, Kuju Area of the Central Coalfields Ltd., He is quite illiterate and Schedule Caste. On falling ill, he reported to the Colliery Doctor, Ara Colliery Hospital who after some days referred him to Central Hospital, New Saray for his treatment, wherefrom after his treatment for a few days he was referred to the C.C. Hospital, Gandhi Nagar, Ranchi on 25th April, 1988, but again on his reference to Pranava New Sewa Sadan, Sitgora (Jamshedpur), Singhbhum (E), wherein he remained admitted under Sl. No. 76 from 14.10.1988. After his return therefrom, as per advice of the Doctor of Gandhi Nagar for his check up on 28.2.1989, he remained admitted under the Doctor's treatment upto 29.3.1989. After his reference to Gandhi Nagar Hospital on 1.4.1989, the Doctor carefully checked and gave him medicine for relief of the disease, and finally found him fit for a light duty on 29.8.1989. When he went with his sick Certificate to the management for resumption of his duty but he was discriminately and illegally not allowed to join his duty. Thus, he is entitled to joining his duty with full back wages and all other consequential relief. The management did not even agree to the conciliation and arbitration.

3. No rejoinder could be filed on behalf of the workman concerned, rather repeated the two same petitions dt. 26.4.1995, 2.5.95 and third petition dt. 1.2.2006 filed by petitioner Mohan Nayak for his substitution of deceased workman Jagnath Nayak all along pending for its hearing since long due to non-filing of the relevant documents by the petitioner. A rejoinder of it filed by the O.P./ Management on 09.01.2008. After hearing both the parties over it, the petitioner as the sole legal heir as an adopted son of Late workman Nayak (Jagnath), who died on 18.12.1993 was allowed as a party to the reference. Though an additional Written statement without his substitution was earlier filed by the petitioner on 05.12.2005, it remained unpressed on his behalf.

4. In a challenge to the maintainability of the reference, the contra pleaded case of the O.P./Management with categorical denials is that the Union has no locus standi to raise the industrial dispute, as the workman was also not a member of it. So it is not an industrial dispute as referred. Workman Jagnath Nayak was employed as a Wagon Loader at the Chainpur Railway Siding of the Ara Colliery of the Management. His main duty was to load coal into Railway Wagons as the Wagon Loader do in gangs as well as they shovel coal into cane buckets carried by others. The workman had fallen sick in April, 1988. He was provided treatment at different Hospitals of the Management, and at outside one. He was declared fit for light duty by the Central Hospital of the Central Coalfields Ltd., where he was also earlier treated. the 'light duty' meant not completely fit for his original and normal duty. The employer instructed him to be completely fit for the particular job he was employed for, and not to claim for some other job on the ground of his inability to do his original job, as there is no such light duty nor light wages. The wages as defined under Sec. 2(rr) of the Industrial Dispute Act and Sec. 2(vi) of the Payment of Wages Act are payable to the workman, subject of fulfillment of the express or implied terms of Employment and the work done. As such the management could not provide any light duty to the workman because the management has a lot of surplus workers affecting its financial capacity, so as per the provision of the NCWA for Voluntary Retirement subject to an employment to one of the dependants of the workman, the workman in state of his disablement was given an opportunity to get a voluntary retirement from serviceman to secure an employment for his dependant, but he declined to avail of it. In such circumstances, where the workman himself could not perform his job nor his dependant could be provided an employment according to the V.R.S. rules, the management is not required to take any action as referred in the reference. Therefore the workman was not entitled to any relief.

5. The O.P./Management in its rejoinder his categorically parawise denied all the allegations of the Union/workman as baseless and frivolous.

FINDING WITH REASONS

6. In the reference, WWI Mohan Nayak, as an adopted son of the deceased workman Jagnath Nayak, the Wagon Loader, has been examined on behalf of the Union concerned. But in spite of the ample opportunity, no management could examine on its behalf. Hence, it came up for hearing final argument of both the parties.

Mr. C. Prasad, the Learned Advocate, for the petitioner, submits that the most vital thing is that the workman was working as Trammer (nowhere pleaded as

Trammer) but due to his suffering from Leprosy followed by T.B., he was firstly referred to the Central Hospital, Nai Sarai, then to the C.C.L. Hospital, Gandhi Nagar, where from to Sitagora, Jamshedpur, Dist. Singhbhum (E) where he was kept from 28.2.1989 to 23.3.1989, but was referred back to the C.C.L. Hospital, Gandhi Nagar, where he was declared medically fit, so when he went to Ara Colliery to resume his duty, submitting all his relevant documents, yet the management disallowed him to resume his duty, resulting in his sitting idle, as such he is entitled to his wages and Medical Allowances. Further submitted on behalf of the petitioner that since the workman died during the pendency of the case, his adopted son petitioner be provided the privilege to get an employment with all due benefits. Further Mr. C. Prasad, Learned Counsel, for the Union/petitioner submits that the death of the workman would not abate the proceeding; and the benefit would go in favour of the petitioner as held by the Hon'ble Supreme Court in the case of Sri Rameshwar Manjhi *Vs.* Sangramgarh Colliery 1994 (L&S), 521 (DB).

7. In the terms of the reference, the contention of Mr. D.K. Verma, the Learned Counsel for the O.P./ Management, is that admittedly, the workman was all along sick, so refusal of the management to resume his duty was not illegal, and that after substitution, the petitioner claims for his employment which is quite beyond the terms of the reference.

8. As per the statement of WWI Mohan Nayak, the petitioner, as the adopted son of the deceased workman Jagnath Nayak, his adopted father worked as a wagon loader at Ara Colliery, Chainpur Siding, Kuju Area of M/s. BCCL; he was illiterate and Schedule Caste; on falling sick, his father in course of employment had reported to the management; then the Colliery Doctor referred him to the CCL Hospital, Naisarai for treatment. But at his no recovery, he was referred to Gandhi Nagar, CCL Hospital, Ranchi wherefrom the Pranabananda Seva Sadan, Sitgora, Jamshedpur for his treatment where the Doctor reported about the workman suffering from T.B., and Leprosy, as per his original prescriptions issued by Gandhi Nagar Hospital and Pranabananda Seva Sadan, Sidhgora, Jamshedpur (Ext. W1 Series — Seven Sheets). After his discharge from his recovery from the aforesaid Jamshedpur based Hospital, his father as per his representation (dt. 28.8.89, its photocopy Ext. W. 2) had represented to the Project Officer, Ara Colliery, for his duty, but he was not allowed to resume his duty nor any dues of his service was paid to him; his father through the Union raised the Industrial Dispute, but he expired in the year 1993 (Ext. W.3, the Medical Certificate of the cause of Death of Jagarnath Nayak (PRW) by the C.C.L. dt. 18.12.1993) The petititoner was adopted as a son of/by the deceased workman in the year 1990. Admittedly his adopted father (the workman) had both T.B. and Leprosy. Though the petitioner denies, yet accepted the instruction of the management to the workman to seek V.R.S. on that ground. The petitioner's denial to disallow his adoptive father from duty on the basis of the medically unfitness of his adoptive father also refers to the reference of the workman's case by the Dy. M.S. on 9.9.89 to the Medical Board for change of job since his suffering from T.B. and Leprosy as evident from the representation of the workman for his duty (Ext. W.2).

In view of the aforesaid facts, I find that the argument of Mr. C. Prasad, Ld. Counsel for the Union/petitioner appears to be quite reasonable and the aforesaid verdict of the Hon'ble Apex Court in the cited case holds good with the present case at the point of its non-abatement for the death of the workman during the trial of the case.

On consideration of the materials as produced by the petitioner, it is found that since the workman had undoubtedly T.B. and Leprosy, highly infectious diseases, and at his alleged recovery, he was rightly referred on that ground by the management to the Medical Board for change of his job in view of his physical conditions, as joining of his duty by a workman firstly inevitably presupposes his medical examination for his medical fitness as per rule of the management. But meanwhile, the workman died.

In result, it is, in terms of the reference, hereby:

ORDERED

That the Award is and the same be passed that the action of the management of Ara Colliery of C.C.L. P.O. Kuju, Hazaribagh, by not allowing the workman Jagnath Nayak, Wagon Loader of Chainpur Siding, Ara Colliery was quite justified at the relevant time, but not making payment of his legal dues was/is unjustified. Since the workman was died during the pendency of the references, the petitioner Mohan Nayak, the adopted son of the deceased workman is entitled to his (adoptive father's) legal dues, Gratuity, C.P.F. etc. including Medical Allowance for the relevant period of his illness as well as to the employment of the petitioner but subject to the rules of the C.C.L. Company concerned, if the workman died premature to his retirement.

KISHORI RAM, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2050.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 12/2012.13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/62/2012-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2050.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2012-13) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Padampur O/c Mines of Chandrapur Area of WCL, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/62/2012-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/12/2012-13

05
08.04.2013

Advocate for the management is present. No statement of claim is filed by the petitioner even if a last chance was given to the petitioner for the same on the previous date.

Petitioner is absent on call. None appears on behalf of the petitioner. No step of any nature is taken on behalf of the petitioner. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Later
08.04.2013

Party No. 1 : The Sub-Area Manager,
Padmapur O/c Mines of
Chandrapur Area of WCL,
Post-Padmapur,
Distt:- Chandrapur,
Maharashtra

V/s

Party No. 2 : The Joint General Secretary,
Rashtriya Colliery Mazdoor
Congress,
Vijay Bhawan,
Vithal Mandir Ward,
Distt. Chandrapur (MS).

AWARD

(Dated: 8th April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Ramayya Laxamayya Racchawar, for adjudication, as per letter No. L-22012/62/2012-IR(CM-II) dated 24.07.2012, for adjudication with the following schedule:—

> "Whether the action of the management of Padmapur Open Cast Sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri Pawankumar the dependent son of Shri Ramayya Laxamayya Racchawar, Ex-employee who retired on 31-05-2011 after putting in 35 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified? To what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement and the case was fixed to 16.10.2012 for filing of statement of claim alongwith documents, list of reliance and witnesses. On 16.10.2012, the management of WCL appeared through their advocate. Though the service of notice sent by registered post with acknowledgement due was sufficient on the petitioner, neither the petitioner appeared in the case nor filed any statement of claim. In the interest of justice, the case was adjourned to 03.01.2013 for filing of statement of claim. To give a chance to the petitioner to file the statement of claim, the case was adjourned from 03.01.2013 to 18.02.2013. To give a last chance to the petitioner to file the statement of claim, the case was adjourned to 08.04.2013 from 18.02.2013.

On 08.04.2013 advocate for the management was present. The petitioner did not appear on repeated calls. No statement of claim was also filed. As it appeared from the record that the petitioner was not interested to proceed with the case, the case was closed and posted for passing of award.

3. As no statement of claim has been filed by the petitioner, in spite of giving sufficient scope for the same, it is necessary to pass a "no dispute" award. Hence, it is ordered:—

ORDER

The reference be treated as "No dispute" award. The petitioner is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2051.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 13/2012-13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/63/2012-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2051.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2012-13) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Padampur O/c Mines of Chandrapur Area of WCL, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/63/2012-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

05
08.04.2013 Advocate for the management is present. No statement of claim is filed by the petitioner even if a last chance was given to the petitioner for the same on the previous date.

Petitioner is absent on call. None appears on behalf of the petitioner. No step of any nature is taken on behalf of the petitioner. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Later
08.04.2013

Party No. 1 : The Sub-Area Manager, Padmapur O/c Mines of Chandrapur Area of WCL, Post-Padmapur, Distt:- Chandrapur, Maharashtra

V/s

Party No. 2 : The Joint General Secretary, Rashtriya Colliery Mazdoor Congress, Vijay Bhawan, Vithal Mandir Ward, Distt. Chandrapur (MS).

AWARD

(Dated: 8th April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Rustam Bhikaji Shirsat, , for adjudication, as per letter No. L-22012/63/2012-IR(CM-II) dated 24.07.2012, for adjudication with the following schedule:—

"Whether the action of the management of Padmapur Open Cast Sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri Sandeep the dependent son of Shri Rustam Bhikaji Shirsat, Tyndle Jamadar who has already put in 35 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified? To what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement and the case was fixed to 16.10.2012 for filing of statement of claim alongwith documents, list of reliance and witnesses. On 16.10.2012, the management of WCL appeared through their advocate. Though the service of notice sent by registered post with acknowledgement due was sufficient on the petitioner, neither the petitioner appeared in the case nor filed any statement of claim. In the interest of justice, the case was adjourned to 03.01.2013 for filing of statement of claim. To give a chance to the petitioner to file the statement of claim, the case was adjourned from 03.01.2013 to 18.02.2013. To give a last chance to the petitioner to file the statement of claim, the case was adjourned to 08.04.2013 from 18.02.2013.

On 08.04.2013 advocate for the management was present. The petitioner did not appear on repeated calls. No statement of claim was also filed. As it appeared from the record that the petitioner was not interested to proceed with the case, the case was closed and posted for passing of award.

3. As no statement of claim has been filed by the petitioner, in spite of giving sufficient scope for the same, it is necessary to pass a "no dispute" award. Hence, it is ordered:—

ORDER

The reference be treated as "No dispute" award. The petitioner is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2052.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिकी अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 14/2012-13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल॰-22012/71/2012-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2052.—In pursuance of Section 17 of the Industries Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2012-13) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Padmapur O/c Mines of Chandrapur Area of WCL, and their workmen, received by the Central Government on 02/09/2013.

[No L-22012/71/2012-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/14/2012-13

05
08.04.2013 Advocate for the management is present. No statement of claim is filed by the petitioner even if a last chance was given to the petitioner for the same on the previous date.

Petitioner is absent on call. None appears on behalf of the petitioner. No step of any nature is taken on behalf of the petitioner. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1: The Sub-Area Manager, Padmapur O/c Mines of Chandrapur Area of WCL., Post-Padmapur, Distt:-Chandrapur, Maharashtra

V/s.

Party No. 2 : The Joint General Secretary, Rashtriya Colliery Mazdoor Congress, Vijay Bhawan, Vithal Mandir Ward, Distt. Chandrapur (MS).

AWARD

(Dated: 8th April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the emlpoyers, in relation to the management of WCL and their workman Shri Narayan Adku Sontakke, for adjudication, as per letter No. L-22012/71/2012-IR(CM-II) dated 24.07.2012, for adjudication with the following schedule:—

"Whether the action of the management of Padmapur Open Cast Sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri Mahendra the dependent son of Shri Narayan Adku Sontakke, Electrician who has already put in 35 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified? To what relief is the workman is entitiled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement and the case was fixed to 16.10.2012 for filing of statement of claim alongwith documents, list of reliance and witnesses. On 16.10.2012, the management of WCL appeared through their advocate. Though the service of notice sent by registered post with acknowledgement due was sufficient on the petitioner, neither the petitioner appeared in the case nor filed any statement of claim. In the interest of justice, the case was adjourned to 03.01.2013 for filing of statement of claim. To give a chance to the petitioner to file the statement of claim, the case was adjourned from 03.01.2013 to 18.02.2013. To give a last chance to the petitioner to file the statement of claim, the case was adjourned to 08.04.2013 from 18.02.2013.

On 08.04.2013 advocate for the management was present. The petitioner did not appear on repeated calls. No statement of claim was also filed. As it appeared from the record that the petitioner was not interested to proceed with the case, the case was closed and posted for passing of award.

3. As no statement of claim has been filed by the petitioner, in spite of giving sufficient scope for the same, it is necessary to pass a "no dispute" award. Hence, it is ordered:—

ORDER

The reference be treated as "No dispute" award. The petitioner is not entitiled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2053.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिकी अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 15/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/248/2007-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2053.—In pursuance of Section 17 of the Industries Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Dhoptala Sub Area of Balarpur Area of WCL, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/248/2007-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/15/2008 Dated:12.4.2013

Party No. 1 : The Sub Area Manager,
Dhoptala O/c Sub Area,
Ballarpur Area of WCL,
Post-Sasti, Tah. Rajura,
Chandrapur (M.S.)

Versus

Party No. 2 : The Working President,
Rashtriya Colliery Mazdoor Congress,
Vithal Mandir Ward, Chandrapur (M.S.).

AWARD

(Dated: 12th April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Smt. Satyamma, for adjudication, as per letter No. L-22012/248/2007-IR(CM-II) dated 09.05.2008, with the following schedule:—

> "Whether the action of the management of M/s. WCL in not allowing Smt. Satyamma the benefit of special voluntary retirement scheme for females is legal & justified? To what relief is the workman concerned entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the applicant, Shri Aleti Yugender, ("the applicant" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of the applicant as stated in the statement of claim is that his mother, Smt. Satyamma Aleti ("the workman" in short) is in the service of Party No. 1 as a sweeper at Dhoptala colliery for the last more than 20 years and a Special Female Retirement Scheme, 2001 ("SFRC" in short) was introduced by Party No. 1 for providing employment to the dependant of the female workers with retirement benefits and under the said scheme, he was selected for employment as the son of the workman along with five others and out of the six persons selected for such employment, except himself, the rest five persons were given employment and as such, the dispute was raised before the ALC, Chandrapur for conciliation, but as the conciliation failed, failure report was submitted to the Central Government by the ALC. The further case of the applicant is that he was selected in the interview conducted by Party No. 1, but still then, he was not provided with the job, even though the other five candidates were provided with the job and therefore great injustice was caused to him and therefore, it is necessary to retire his mother, Smt. Satyamma from service with retirement benefits and to provide him employment as a general mazdoor in place of his mother.

3. In their written statement, Party No. 1 have pleaded *inter-alia* neither the name of the person, who has signed the statement of claim has been mentioned nor there appears and verification of the claim made by the person in the statement of claim and therefore the statement of claim is not tenable and the disputant union has not filed any document establishing that the workman is a member of their union and there is no testimony to demonstrate that the present dispute has been duly espoused, supported and championed by the union and in absence of the same, it cannot constitute as a valid industrial dispute as contemplated under section 2(k) of the Act. The further case of Party No. 1 is that the plain reading of the term of reference shows that the controversy involved in the present reference is regarding the special voluntary retirement scheme and the above subject does not fail with the ambit of schedules II and III of the Act and on that ground also, the reference is not maintainable in law. The further case of Party No. 1 is that to facilitate the female employees working in WCL to relinquish job, a special voluntary scheme only for female employees was introduced by the management of WCL on adhoc basis strictly for limited period, with the terms and conditions stipulated there in and the special scheme of VRS of female employees came to be introduced *vide* Coal India Ltd. circular dated 2nd August, 2002 followed by the circular of WCL and Smt. Satyamma Aleti, who is presently working at Dhoptala Mines applied under the said scheme and her application was duly considered and approved by the management, subject to the condition that her son, Shri Yogendra would appear before and committee at the Headquarters on 09.03.2004 at 10.30 AM and intimation to the said effect was given by Suptd.(M)/Manager, Dhoptala O C Mines *vide* letter No. 506 dated 27/28.02.2004 to Shri Satyamma and she had received the said letter, but her son did not appear before the committee even though two

opportunities were given and later on, Satyamma informed that as her son was sick, he could not able to appear before the committee and the case of Smt. Satyamma Aleti went by default, which would not be extended further and it was on 16.04.2005, much after the expiry of the scheme, for the first time Smt. Satyamma Aleti enquired into the fate of her application for VRS and Smt. Satyamma was all along in employment and she is in service till today and the approval of the application of Smt. Satyamma was valid for 45 days, where after, it ceased to operate and as the conditions required to be fulfilled were not fulfilled, the benefit of the special VRS could not be given to Smt. Satyamma.

4. The applicant has examined himself as a witness in support of his claim, besides placing reliance on the documentary evidence. The evidence of the applicant is on affidavit. In his evidence, the applicant has reiterated the facts mentioned in the statement of claim. However, in the cross-examination, the applicant has admitted that his mother, Smt. Satyamma Aleti is still working at Dhoptala, WCL and the application filed by his mother for voluntary retirement was rejected by the WCL authority and the scheme of voluntary retirement for women workman was for a limited period and as within the said period, he was not selected for appointment, he was not given any employment.

5. One Shri Sashikanta Rameshwar Tupparwar has been examined as a witness on behalf of Party No. 1. In his examination-in-chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement. In the cross-examination, this witness has stated that as the applicant did not appear with his mother before the Board, he was not given the employment.

6. At the time of argument, the learned advocates for the parties reiterated the stands taken by the parties in their respective pleadings. It was submitted by the learned advocate for the applicant that Party No. 1 illegally did not give employment to the applicant. Learned advocate for the Party No. 1 submitted that as the applicant did not appear before the committee and failed to fulfill the conditions within the stipulated time, he was not given the employment.

7. In this case, all most all the facts are admitted. It is clear from the materials on record and the own admission of the applicant that the scheme of VRS for female workman was for a limited period and within the said period, the workman was not selected for appointment and he did not appear before the committee at the headquarters at Nagpur, as required and as such, he was not given the employment and the mother of the applicant, Smt. Satyamma has been in continuous service of Party No. 1. From the materials on record and the discussions made above, it is found that no illegality was committeed by the Party No. 1 in not allowing the benefits of special voluntary retirement scheme for females to Smt. Satyamma. Hence, it is ordered:—

ORDER

The action of the management of M/s. WCL is not allowing Smt. Satyamma the benefit of special voluntary retirement scheme for females is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2054.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सेन्ट्रल माइनिंग, प्लान एण्ड डिजाइनिंग इन्स्टीट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 18/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/13/2008-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2054.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2008) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Central Mining, Planning and Design Instt. Ltd., and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/13/2008-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/18/2008 Date: 12.04.2013

Party No. 1(a) : The Regional Director, Central Mining, Planning and Design Instt. Ltd., Jaripatka, Nagpur.

1(b) : The Chairman, Central Mining, Planning & Designing Instt. Ltd., Gondwana Place, Kankee Road, Ranchi-834008.

1(c) : The Deputy Peronel Manager, Central Mining, Planning & Disigning Instt. Ltd., Jaripatka, Nagpur.

V/s

Party No. 2 : Shri Maroti Abhinan Shende,
At Bhidoni, Post: Chavarni,
Tehsil Sansar, Distt. Chhindwara,
Chhindwara (M.P.).

AWARD

(Dated: 12th April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Maroti, for adjudication, as per letter No. L-22012/13/2008-IR (CM-II) dated 03.06.2008, with the following schedule:—

> "Whether the alleged action of the management of M/s. Central Mining, Planning & Designing Institute in superannuating Shri Maroti prematurely is legal and justified? To what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Maroti, ("the workman" in short) filed the statement of claim and the management of CMPDI, ("Party No. 1" in short) filed the written statement.

The case of the workman is that he was appointed as a Security Guard *w.e.f.* 03.02.1969 by Party No. 1 and his appointment was of a permanent nature and Party No. 1 (b) had also issued a certificate dated 08.10.1987 in that respect in his favour and he was also issued with an identity card and in the said identity card, his date of birth had been mentioned as 12th March, 1942 and he was born in village Vairagad in the District of Chhindwara and he had taken education upto 2nd standard and at the time of joining the service, he had submitted the birth certificate issued by the Grampanchayat of village Vairagad, showing his date of birth as 12.03.1942 and on the basis of the birth certificate, his date of birth was mentioned as 12.03.1942 in the 'B' form and identity card.

The further case of the workman is that initially, the age of retirement of the employees of his cadre was 59 years, but the age of retirement was enhanced to 60 years as per order dated 27/28.10.1975 issued by the Deputy Superintendent of the collieries, Sillewara Project and in view of such order, he ought to have been retired at the age of 60 years, but Party No. 1 made him retired from service *w.e.f.* 15.01.1993, by order dated 14.01.1993, *i.e.* nine years prior to the age of retirement and due to such premature retirement, he lost his salary for the period of nine years amounting to Rs. 3,24,000 and being aggrieved by such action, he issued a legal notice to the Party No. 1, but Party No. 1 neither gave any reply to the said notice nor considered his claim, so he filed U.L.P.C. No. 244/93 before the Second Labour Court, Nagpur and on 28.01.2002, due to want of jurisdiction, the Second Labour Court dismissed the complaint, and thereafter, he filed O.A. No. 2109/2002 before the Central Administrative Tribunal, but by order dated 21.01.2003, he was allowed to withdraw the application by the CAT with the liberty to approach the Competent Authority within a period of two weeks. The workman has further pleaded that then he raised the industrial dispute before the ALC (Central), Nagpur *vide* proceedings No. ALCN-1/55(8)/2003, but the ALC dismissed the complaint on merit, so he filed Writ Petition No. 2834/2004 before the Hon'ble High Court, Nagpur Bench, Nagpur and the Hon'ble High Court directed the ALC to submit failue report to the Central Government and accordingly, the ALC submitted the failure report and the Government in its turn, referred the dispute to this Tribunal for adjudication.

The workman has prayed to direct the Party No. 1 to pay him the salary of nine years with interest at the rate of 18% per annum and all consequential monetary benefits.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the workman was retired from service on 15.01.1993 and received all retirement benefits and it is well settled that no person can be permitted to seek correction of his date of birth at the fag end of the service, but in this case, the workman has raised the dispute regarding his date of birth after his retirement and as such, the claim is liable to be rejected summarily. The further case of Party No. 1 is that the claim of the workman is hit by the law of estoppels, as because, after superannuation, he accepted all the retirement dues without any protest and as such, he is stopped from challenging his superannuation. It is also pleaded by the Party No. 1 that the claim of the workman suffers from inordinate delay and latches and he was not at all diligent in filing the case in the proper court unde the proper provisions of law and on the ground of delay and latches also, the claim of the workman is liable to be rejected.

It is further pleaded by Party No. 1 that identity cards are filled in either by the employees themselves or by the staff on the basis of the instructions given by the concerned employee and the contents of the identity card are only for the purpose of identity of the concerned employee and the said contents do not from part of the statutory service records and they are not aware as to who, how and when the date of birth of the workman in the identity card came to be mentioned as 12.03.1942 and the identity card is not a statutory document and it cannot be relied upon and the applicant, during his entire service tenure had never informed them that he had studied up to 2nd standard and that he does posses a birth certificate and he had not produced any such certificate at the time of joining his services, otherwise it would have been available in his service record and as no certificate of birth or school leaving certificate was produced by the workman at the time of his joining the service, his age on the basis of his physical appearance and medical examination came to be recorded as 45 years as on 20.12.1976 and the said fact was acknowledged by the workman by signing the form of Coal

Mines Family Provident Scheme, 1971 and as such, the workman cannot be permitted to challenge the same after superannuation and the workman was retired with effect from 15.01.1993, after attaining the age of superannuation *i.e.* 60 years and the pension scheme came into existence in the year 1994 and as such, he is not entitled for the same and the workman is not entitled to any relief.

4. In the rejoinder, it is pleaded by the workman that he is virtually illiterate and as such, he received the retirement dues without protest and there is no inordinate delay and latches and due to approaching wrong forum, there was delay in filing the claim and such delay was not due to his fault and in 1974, some officers from Ranchi came to take photographs of himself and 25 others and those officers directed him to produce proof regarding his date of birth and he produced the certificate issued by the Gram Panchayat, Vairagad and the certificate issued by the Tehasildar, Saunser, where his date of birth was mentioned as 12.03.1942 and on the basis of the photograph taken by the officers and the relevant documents, the Party No. 1 prepared his identity card and the said documents is a statutory document and his age was not determined as 45 years in 1976 on the basis of his physical appearance and medical examination and only to deprive him from the benefits of the pension scheme, the Party No. 1 made him retired from services prematurely at the age of 51 years on 15.1.1993 and he is entitled for the benefits as claimed by him.

5. Besides placing reliance on the documentary evidence, the workman has examined himself as a witness. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim and rejoinder. He has also proved the identity card, copies of his two representations made to Party No. 1 dated 16.01.1993 and 05.02.1993 and his voter identity card as Exts. W-I to W-IV respectively.

In his cross-examination, the workman demolishing his own claim has stated that he did not read in any school and he was born in village Bhidoni, which is under Chavarni Panchayat in the State of Madhya Pradesh and he had not filed any certificate granted by the Panchayat regarding his date of birth and he does not have any such certificate in his possession and he does not have any proof that he had submitted the Panchayat certificate before the authority of CMPDI and he had signed the Coal Mines Provident Fund declaration and he has received some dues from the CMPF in terms of the said declaration.

6. No oral evidence was adduced by Party No. 1. However, Party No. 1 placed reliance on documentary evidence.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman joined in service as a Security Guard on 03.02.1969 and in 1974, he had produced the copy of the birth certificate issued by the Gram Panchayat and the certificate issued by the Tehasildar, sounser, in which his date of birth was mentioned as 12.03.1942, before the officers, who had come from Ranchi to take the photograph of the workman and on the basis of such documents, the identity card Ext. W-I, issued to the workman was prepared, mentioning the date of his birth as 12.03.1942 and in the documents filed by the Party No. 1, the date of birth of the workman has not been mentioned and only to retire the workman prematurely, the date of birth was not mentioned, but his age "45 years" was mentioned and as the date of birth of the workman is 12.03.1942, he was to retire in 2002 on attaining the age of 60 years, but due to the premature retirement on 15.01.1993, the workman lost nine years of service and as such, he is entitled for the salary of nine years and the benefits of pension, as the pension scheme came into force in the year, 1994.

8. Party No. 1 did not advance any argument.

9. On perusal of the record including the pleadings of the parties and the oral and documentary evidence, it is found that the workman has not come to the Tribunal with clear hands. In his statement of claim, the workman has mentioned that he belongs to village Vairigad (or Wairgad, as mentioned at some places in statement of claim).

Where as in his cross-examination, he has stated that he was born in village, Bhidoni, which is under Chavarni Panchayat. The voter identity card, Ext. W-IV produced by the workman also shows that he belongs to village Bhiwdoni under Sounsur Tahasil of Chhindwada district (M.P.). In the statement of claim, the workman has mentioned that he studied up to standard II, but in his cross-examination, he has categorically admitted that he did not read in any school. It is necessary to mention here that in the statement of claim, the workman has not mentioned the name of the school where he studied upto Standard II and the name of the panchayat under which, village Vairagad @ Wairgad is situated. In the statement of claim, the workman has mentioned that he produced the certificate issued by the Panchayat at the time of his joining the service, but contradicting such statement, in his rejoinder, the workman has mentioned that he produced the certificate issued by the Panchayat and so also the certificate issued by the Tahasildar, Sounsur in the year 1974, before the officers, who had come from Ranchi office to take his photograph and on the basis of such documents, his identity card was prepared and his date of birth was mentioned as 12.03.1942. The workman has njot produced either the certificate granted by the Panchayat or the certificate issued by the Tahasildar, Sounsur or even the school leaving certificate in support of his claim that his date of birth is 12.03.1942. In his cross-examination, the workman has admitted that he has not filed any certificate granted by the Panchayat and he does not have such a certificate in his possession. From the materials on record, it is found that

untrue statements, as mentioned above have been made by the workman only to suit his claim.

10. The most significant fact as found from the record is that the workman neither in the statement of claim nor in his evidence on affidavit has claimed that he was born on 12.03.1942 or that his real date of birth is 12.03.1942. His claim is that in the certificate granted by the Panchayat, his date of birth was mentioned as 12.03.1942. If for the sake of argument, it is held that the date of birth of the workman is 12.03.1942, then he was below 18 years of age on 03.02.1969, *i.e.* the date of his appointment. It is never the case of the workman that he got the appointment and joined service on 03.02.1969, even though he was a minor at that time. Such facts clearly show that the claim of the workman is not true.

11. The workman has produced Ext. W-IV, the voter identity card in support of his claim. On persual of Ext W-IV, it is found that in the same his age has been mentioned as 54 years as on 01.01.1995. On calculation, by taking the age mentioned in Ext. W-IV, the date of birth of the workman comes to 01.01.1941 and not 12.03.1942 as claimed by him.

12. On the other hand, the two documents filed by the Party No. 1, show that the age of the workman was 45 years as on 20.12.1976. The workman has admitted those two documents bear his signatures. The genuineness of the said two documents has not been disputed by the workman. So, if the workman was 45 years of age on 20.12.1976, then his year of birth is 1931. Admittedly, the workman was retired from service on 15.01.1993. So, on calculation, it is found that on the date of retirement, the workman had already attained the age of superannuation *i.e.* 60 years.

From the discussions made above and the materials on record, it is found that the workman was rightly retired from services on 15.01.1993 by the Party No. 1. Hence it is ordered:—

ORDER

The action of the management of M/s Central Mining, Planning and Designing Institute in superannuating Shri Maroti is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer.

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2055.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 29/2012-13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/90/1992-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2055.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2012-13) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial dispute between the management of Western Coalfields Ltd. Nagpur Area, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/90/1992-IR (CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/29/2012-13 Date: 02.04.2013.

Party No. 1 : The Sub Area Manager,
Kamptee Sub Area of WCL,
Kamptee, Distt. Nagpur. (M.S.)

V/s

Party No. 2 : Shri Bhutan Ramakant,
Inder Colliery of WCL,
Kamptee, Distt. Nagpur (M.S.)

AWARD

(Dated: 2nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Bhutan Ramakant, to CGIT-Cum-Labour Court, Jabalpur for adjudication, as per letter No. L-22012/90/92-IR (CM-II) dated 26.06.1992, with the following schedule:—

> "Whether the action of the management of Kamptee Colliery of WCL, in terminating the services of Shri Bhutan Ramakant *w.e.f* 03.07.1990 is legal and justified? If not, to what relief is the concerned workman is entitled?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Bhutan Ramakant,

("the workman" in short) filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he had been working with Party No. 1 as a general mazdoor at Kamptee colliery since 1979 and he was served with the charge sheet dated 01.02.1990, wherein false allegation of committing theft of rollers in the night of 30.01.1990 was made against him and he submitted his reply to the said charge sheet on 26.02.1990, denying the charges levelled against him and such rollers were never found in his possession and during the domestic enquiry, the name of the two persons alleged to be with him at the time of the commission of the alleged theft were not disclosed and no charge sheet was submitted against any co-worker alongwith him and the contents of the charge sheet is vague and was not *bonafide* and the date and time of commission of the alleged theft of ten rollers were not mentioned in the charge sheet and according to the allegations, he was suspected to have committed the theft of the rollers on 30.01.1990 and after his duty was over on 30.01.1990 in the second shift, he handed over the charge to shri Vinod, the guard of the third shift and while he was passing the main check post, he was asked by Shri Telkar to perform duty in the third shift also, as one person was required for performing the duty and while he was performing duty in the third shift, Shri Ramsurendra, a guard of third shift reported about the theft of rollers at the main check post and without any preliminary enquiry, false allegation of commission of the theft was made against him with *malafide* intention and in the domestic enquiry, he was not given sufficient opportunity to plead his case and his witnesses were not allwed to be examined and the enquiry was held without following the principles of natural justice and the enquiry is unjustified, illegal and contrary to law.

It is further pleaded by the workman that he was provided work from 22.03.1990 to 02.07.1990, during the pendency of the enquiry, which clearly indicates that he was not involved in commission of major misconduct and he was served with the termination order dated 03.07.1990, on the basis of the illegal domestic inquiry and as such, he is entitled for reinstatement in service with continuity and full back wages.

3. The Party No. 1 in the written statement have pleaded *inter alia* that the workman was appointed as a general mazdoor at Inder colliery, Kamptee *vide* order dated 21.08.1978 and on 30.01.1990, between 2.30 A.M. to 3.00 A.M., the workman was caught red handed, while committing in the coal handling plant and a complaint was received from the security officer regarding attempt to commit theft by the workman and as such, charge sheet dated 02.02.1990 was submitted against him and the workman submitted his reply on 26.02.1990 and as his reply was found unsatisfactory, by order dated 06.03.1990, Shri L. George, Personnel Officer was appointed as the enquiry officer to conduct a detailed departmental enquiry into the charges levelled against him and the workman attended the enquiry with his coworker and their witnesses were examined in presence of the workman and were cross-examined by the workman and his co-worker and the enquiry proceedings continued from time to time on various dates and after closure of the evidence from their side, the workman was given opportunity to produce his defence evidence and the workman gave his own statement and declined to examine any other witness and thereafter, the enquiry officer closed the proceedings and gave his findings holding the workman guilty of the charges levelled against him and on the basis of the findings of guilt by the enquiry officer and after due approval of the competent authority, by order dated 03.07.1990, punishment of dismissal from services was imposed against him and the workman was given full opportunity to defend himself and the enquiry was conducted as per the principles of natural justice and the enquiry was legal and proper and the punishment imposed is just and proper and the workman is not entitled to any relief.

4. It is necessary to mention here that, in this reference, award had been passed on 29.12.1996 holding the action of the management in terminating the services of the workman as legal and justified. The workman had filed an application for review of the award, but the said application was rejected by order dated 13.02.2001. The workman challenged the award dated 29.12.1995, before the Hon'ble High Court of Judicature of Bombay, Nagpur Bench, Nagpur in writ petition No. 3619 of 2001 and the Hon'ble High Court by order dated 25.09.2012 was pleased to quash and set aside the award and to remand the case for fresh decision in accordance with law.

5. At this juncture, I think it necessary to mention that as per orders dated 07.03.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the learned advocate for the workman that there are various discrepancies in the charges framed against the workman and in the evidence of witnesses examined by the management and the enquiry officer has relief upon the evidence of the witness, P.W. 4-Manohar Janba to hold the charges to have been proved against the workman, but the said witness had never told that the rollers were stolen by the workman and the workman was on duty in the second shift till 12.45 hrs in the night, where after, he handed over the charge to security guard, Shri Vinod and at 12.15 hrs. when the witness, Manohar Janba checked the belt, he found the alleged theft of motors was already taken place, so the findings of the enquiry officer are perverse, illegal and also bad in law and contrary to the evidence on record.

It was further submitted by the learned advocate for the workman that there was no police report or complaint against the workman in regard to the alleged theft dated 30.01.1990 and the workman was falsely implicated and in absence of any police complaint, spot panchnama and seizure, the enquiry officer ought to have concluded that there was actually no theft on 30.01.1990 and hence, the conclusion drawn by the enquiry officer regarding the involvement of the workman in the alleged theft is perverse and illegal.

The leanred advocate for the workman during the course of argument, drew the attention of the Tribunal to the different discrepancies in the evidence of the six witnesses examined by Party No. 1 in the departmental enquiry and to the fact that the star witness, who was the main complaint, Shri Ram Surendra was not examined by the management and that the enquiry officer did not take such important facts into consideration while holding the workman guilty of the charges and as such, the findings of the enquiry officer are perverse and erroneous and though the management entirely failed to establish the charges, the enquiry officer mechanically and arbitrarily gave the finding that all the charges have been proved and the said findings are perverse.

It was submitted by the learned advocate for the workman that the management while imposing the punishment did not consider the previous clean and unblemished record of the workman and therefore, the punishment of dismissal was unwarranted and the same is shockingly disproportionate and the same is liable to be quashed and set aside and the workman since the date of his dismissal is unemployed and therefore, he is entitled for reinstatement in service with full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that in the statement of claim there is no challenge to the findings recorded by the enquiry officer, so there is no need to consider the submissions of the workman on the point of the perversity of findings recorded by the enquiry officer. It was also submitted by the learned advocate for the Party No. 1 that as per order dated 07.03.2013, the departmental enquiry conducted against the workman has been held to be legal, proper and in accordance with the principles of natural justice and in the depatmental enquiry, eye witnesses, who had caught the workman red handed while committing theft of the rollers were examined and the said witnesses confirmed the fact that the workman was caught red handed while committing theft of the rollers and though the workman tried to make out a case that he was asked by shri Telkar to continue in third shift due to shortage of man power, he failed to prove the same and the findings recorded by the enquiry officer are not perverse. It was also submitted that the workman was terminated from services on 03.07.1990 *i.e.* about 23 years back and it is not expected that the workman was not gainfully employed and the workman has neither pleaded not proved that he was not gainfully employed during all these years and hence the question of granting back wages does not arise and the reference is liable to be answered in negative against the workman.

8. Before delving into the merit of the matter, I think it apropos to mention the charges levelled against the workman and the allegations on the basis of which such charges were levelled.

The English translation of the allegations as mentioned in the charge sheet is as follows:—

> "On 30.01.1990, in between 2.30 to 3.00 AM, two persons came to C.H.P.-2 to commit theft of roller and they were seen by the fitter, helper and the operator working in the night shift and when they went to catch hold of them, they found you taking out the roller at the spot and the second person to have run away. Previously, when the belt had been checked, ten rollers had been found missing, about which, Shri Ramsurendra Rajmangal had submitted a report to Shri Telkar after the end of the second shift.
>
> Your duty was from 04.00 PM to 12.00 AM, but at 2.30 AM after entering in to the area your were moving there in order to commit theft. It was clear that you had committed theft of the ten rollers which were missing and you were caught red handed, while trying to take away more rollers. Your hands were soiled with sand and coal dust and you also made altercation with Shri Manohar Janebji, operator and when Shri Kadu R.K. started making enquiry, you picked up quarrel with him and you bacame discourteous and started talking "ulta sidha". You also threatened to assault the belt fitter, helper and operator present there. It was clear from you above behaviours that after your duty hours were over, with the intention to commit theft, you remained in the premises and with the help of an associate continued to commit theft of the rollers. After committing theft of ten rollers easily, when you wer taking away the rollers again, you were caught red handed.
>
> Your above acts amount to commission of misconducts under the different clauses of the certified permanent standing order."

The charges levelled against the workman are as follows:—

17(i) (1) Theft, fraud or dishnoesty in connection with the employer's business or property.

17(i) (3) willful in sub-ordination or disobedience, whether along or in-conjunction with another or others, of any lawful or reasonable order of a superior.

17. (i) (9) Causing willful damage to work in progress or to the property of the employer.

17 (i) (17) Any breach of the Mines Act, 1952 or any other Act or any rules, regulations or bye-laws there under, or of any standing orders.

17 (i) (18) Threatening, Abusing or assaulting any superior or co- worker.

17 (i) (20) Preaching of or inciting to violence.

17 (i) (32) Roaming without any reasonable cause and or causing obstruction in the work of other employees on work.

9. It is also necessary to mention here that it is well settled by the Hon'ble Apex Court in a string of decisions that interference in the findings in a disciplinary proceedings is permissible only when there is no material for the said conclusion and that on the materials, the conclusion cannout be that of a reasonable man.

So, keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

10. On perusal of the allegations and charges levelled against the workman in the charge sheet submitted against him, it is found that the allegations *prima facie* do not constitute any misconduct under clauses 17 (i) (3), 17 (i) (9), 17 (i) (17), 17 (i) (20) and 17 (i) (32) of Standing Order. On perusal of the evidence adduced by the Party No. 1 in the departmental enquiry against the workman, it is found that there is no *iota* evidence in support of the charges under the above said clauses and so also in respect of the charge under clause 17 (i) 19 of the Standing Order. When there is no evidence at all on record of the departmental enquiry in support of the charges under clauses 17 (i) (3), 17 (i) (9), 17 (i) (17), 17 (i) (19), 17 (i) (20) and 17 (i) (32) of the Standing Order, the findings of the enquiry officer that charges under the said clauses have been proved against the workman are perverse.

11. So far the charge under clause 17(i) (1) of the Standing Order *i.e.* commission of theft of employer's property is concerned, on perusal of the materials in the record of the enquiry, it is found that the findings of the enquiry officer in that respect is against the evidence on record. There were two reports in regard to the theft, one submitted by Shri A.V. Salankar, Fitter to the Engineer, Inder colliery on 31.01.1990 and the other by Shri B.K. Mishra to the Mines Manager, Inder colliery on 31.01. 1990, which were the earliest version of the management about the occurrence. According to the report submitted by Shri A.V. Salankar, which has also been signed by Shri Manohar Zanbeji and Pundilik Keshavrao (MWs 4 and 5 in the departmental enquiry) and others, chowkidar, Ram surendra when checked the belt at 11.50 PM on 30.01.1990, found ten rollers missing from the belt. There is nothing in the said report as to when and how the said rollers were taken away from the belt and as to who had taken away the same. The only allegation in the said report was that the workman was found with another man at 2. A.M. near the place of alleged occurrence. There is nothing in the said report that the workman was caught red handed while committing theft of the roller or while trying to remove the roller from the belt.

Though six witnesses were examined by Party No. 1 in the departmental enquiry against the workman, there is nothing in the evidence of the MWs 1, 2, 3 and 6 against the workman. So far the evidence of MWs 4 and 5 is concerned, the same is against the contents of the first report submitted by MWs 4 and 5 alongwith Shri A.V. Salankar and others. It is found from the materials on record of the enquiry that Party No. 1 also failed to prove that the workman committed theft of the rollers. As the findings of the enquiry officer in regard to the charge under clause 17(i) (1) of the Standing Order is against the evidence on record, the same is also held to be perverse.

12. As the findings of the enquiry officer are held to be perverse, the punishment imposed against the workman basing on such perverse findings cannot be sustained and as such, the punishment of termination of the services of the workman is set aside.

13. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled. In view of the findings as given above, the workan is entitled for reinstatement in service with continuity. So far the back wages is concerned, taking into view the facts and circumstances of the case, I think that payment of 50% of back wages from the date of termination will meet the ends of justice in this case. Hence, it is ordered:—

ORDER

The action of the management of Kamptee Colliery of WCL, in terminating the services of Shri Bhutan Ramakant w.e.f. 03.07.1990 is illegal and unjustified. The workman is entitled for reinstatement in service with continuity. The workman is entitled to get 50% of the back wages from the date of his termination till the date of his reinstatement. The Party No. 1 is directed to comply with the award within 30 days of the publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2056.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 40/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/345/2000-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. **2056.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award Ref. 40/2002 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., Nagpur Area, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/345/2000-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/40/2002 Date: 01.04.2013

Party No. 1 : The General Manager, Western Coalfields, Ltd., Nagpur Area, Jaripatka, Nagpur.

V/s

Party No. 2 : The Zonal Secretary, Coalmines Engineering Workers Association, Ward No. 10, PO. Palacharai, Chhindwara.

AWARD

(Dated: 1st April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Rajesh Kumar Babhut, for adjudication, as per letter No. L-22012/345/2000-IR (CM-II) dated 18.04.2002, with the following schedule:—

> "Whether the action of the management of WCL through its General Manager, Nagpur Area, Jaripatka, Nagpur in dismissing Sh. Rajesh Kumar Babhut 'Loader' w.e.f. 20.07.1999 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Rajesh Babhut, ("the workman" in short) through his union, "Coal Mines Engineering Workers Association", ("the union" in short) filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that it (union) is a registered trade union, under the Trade unions Act, 1926 and the Party No. 1 is a government coal company and a "state" under article 12 of the Constitution of India and the workman was initially appointed as a loader on 08.06.1989 and his employment was as a dependent in terms of NCWA and the workman belongs to village Amabara of Chhindwara District in the State of Madhya Pradesh and he was employed at Silewara colliery of Nagpur area, situated about 150 kilometers away from his native village and he was not provided with any accommodation and soon after his joining duty, thieves entered into his house at Ambara and while the workman tried to defend himself, he was stabbed with knife by the thieves and sustained grievous injuries below left shoulder and he was treated at Government Hospital, Junnardeo (M.P.) and the incident affected him mentally and he suffered from fear psychosis and was not able to remain alone. The further case as presented by the union is that a charge sheet dated 17.06.1995 was issued against the workman by the Mines Superintendent/Manager, Silewara colliery and through the workman was ill and was under treatment, he submitted his reply *vide* his letter dated 26.06.1995, which was sent by registered post with A.D. and such reply was received in the office of the Manager on 30.06.1995 and in his reply, the workman had categorically informed that he was ill and under treatment and he had been informing the management from time to time about his illness and that he would resume duty as soon as he would be fit for the same and the Party No. 1 neither acknowledged the receipt of the letter nor gave any reply to the workman and remained silent from 17.06.1995 to 07.01.1999 and on 08.01.1999, the competent authority issued a letter appointing Shri U.S. Saha as the enquiry officer and Shri H.N. Chinchkhede as the management representative to conduct the enquiry against the workman and the workman apprehended that he would be pressurised in the enquiry, so he *vide* his letter dated 12.03.1998 intimated the manager, Silewara colliery that he had been intimating time to time about his sickness and also requested to allow him to resume his duties and a camera enquiry was held in a haste and the enquiry officer completed the enquiry in only one day *i.e.* 06.02.1999 and the enquiry officer did not conduct the enquiry in a fair and proper manner and the principles of natural justice were violated and on the basis of such unfair enquiry and biased and prejudiced report of the enquiry officer, the workman was dismissed from services *vide* order dated 20.07.1999

and the said order is illegal and suffers from several infirmities.

The further case as projected by the union on behalf of the workman is that the charge sheet submitted against the workman suffers from several serious infirmities and the details regarding the alleged absence without sufficient cause was not mentioned and the list of documents and witnesses were not supplied and the case was based on only records, therefore documents should have been supplied to the workman prior to the initiation of the enquiry and the enquiry report is not based on the evidence and the same is contradictory to the facts on record and is therefore is perverse and the same is outcome of bias and the enquiry officer did not explain the charges and reply given to the same and so also the procedure of the enquiry to the workman during the enquiry and the evidence and documents submitted by the workman were not considered in appropriate manner and the enquiry officer recorded the proceedings in his own way as he liked and the management representative was examined as a witness in the enquiry, which is not permissible and as such, the enquiry proceeding is bad in law and during the enquiry, the workman had categorically explained that he was not being allowed on duty at times by the overmen/incharge and that he was weak, feeble and met with accident during and in course of employment and was treated at WCL hospital for the period from 10.03.1993 to 26.04.1993 and therefore his case should have been considered in a separate footing. It is also pleaded by the union that no second show cause notice was issued by the Party No. 1 to enable the workman to explain his case before the punishment of dismissal was imposed and the punishment imposed is illegal and malafide and the charge sheet was submitted on 17.06.1995, whereas, the enquiry was initiated on 08.01.1999 *i.e.* after a gap of four years and as such, the enquiry is not maintainable and the punishment is too harsh and disproportionate.

The union has prayed for the reinstatement of the workman in service with continuity and full back wages.

3. The Party No. 1 in their written statement, denying the allegations made in the statement of claim have pleaded *inter-alia* that the workman has made baseless allegations, which are even false to his own knowledge and the workman is a person, who was not having a clean record and he was in habit of remaining unauthorisedly absent without their being any reason and the statement of claim filed by him is nothing but to gain sympathy of the court and the case of the workman is a case of proven misconduct and the workman has misquoted the facts and law, which appears to have arisen due to misconception and misconstruction of the facts and law involved in the case.

The further case of the Party No. 1 is that the workman was appointed as a loader on 09.06.1989 and he remained unauthorizedly absent from 01.04.1994, as such, he was charge sheeted on 17.06.1995 and was dismissed from services after following due process of law on 20.07.1999 and even though the charge sheet was issued in 1995, during the continuance of the service, the workman further remained unauthorisedly absent and hardly joined the duties during the period of enquiry, which speaks of the conduct of the workman and the workman *vide* his letter dated 18.04.1997 had categorically admitted that he had remained unauthorisedly absent and in such circumstances, nothing survived in the matter and the reference needs to be negativated in limine without further adjudication.

It is also pleaded by the Party No. 1 that the previous record of the workman was also not in consonance with the service regulations and in the year 1990, he was present for one day, in 1991, he remained present for 3 days, in 1992, he did not join duty even for a single day and in 1993, his attendance was only for 43 days and the workman had admitted that he was absent from 18.02.1995 to 26.12.1995, 02.01.1996 to 24.06.1996 and 27.06.1996 to 07.03.1998 on medical grounds and he also did not co-operate in the enquiry and the enquiry was delayed due to the conduct of the workman and the workman remained absent from 1995 to 06.02.1999, *i.e.* the last date of sitting of the enquiry and the workman submitted his reply to the charge sheet refuting the claim on medical grounds, without submitting any documentary evidence and as his reply was found unsatisfactory, the enquiry was duly constituted *vide* letter dated 22.07.1995 and the said fact was communicated to the workman and the workman did not turn-up on the fixed dates of the enquiry and due to the non-cooperation of the workman, the enquiry could not be completed and during such period, the enquiry officer, Mr. Prasadan was transferred, as such, a new enquiry officer was appointed on 08.01.1999 and the workman sought adjournment on 20.01.1999 on the ground of absence of his representative and as such, the enquiry was adjourned to 28.01.1999 and on that date, as the relative of the workman died, the enquiry was once again adjourned to 06.02.1999 and on 06.02.1999, the enquiry was concluded and on 05.04.1999, second show cause notice alongwith the report of the enquiry officer was issued to the workman and in his findings, the enquiry officer had categorically held the charges to have been proved against the workman. The further case of the Party No. 1 is that in the statement of claim dated 11.09.2002, the only ground raised by the workman was that the punishment is disproportionate and he was deprived from appeal and the workman without seeking the permission of the Tribunal and without filing any application, field the amended statement of claim, which cannot be looked into or considered for the purpose of adjudicating the reference. It is also pleaded by the Party No. 1 that the union has no locus what-so-ever to raise the dispute, which is apparent from the name of the union, which is meant for the engineering workers only and in this case, the workman was a loader and he had no nexus with the engineering job and the workman was not ill and he

was not under medical treatment and he did not inform the management about his sickness from time to time as alleged and proper documents were not submitted by the workman and the charge sheet submitted against the workman was explicit and did not suffer from any defect and all the documents were supplied to the workman and witnesses were examined in presence of the workman and the enquiry was just and fair and according to the principles of natural justice and the workman was rightly dismissed from services and he is not entitled to any relief.

4. The workman has filed his rejoinder denying the allegations made by the Party No. 1 in their written statement.

5. As this is a case of dismissal of the workman for services after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and *vide* order dated 04.01.2013, it was held that the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument (in the written notes of argument), it was submitted by the learned advocate for the workman that in view of the principles settled by the Hon'ble Apex Court, the Tribunal while exercising the power under section 11-A of the Act has to avert to all points raised before it and the enquiry officer did not follow the principles of natural justice, while conducting the enquiry and he worked only as a "recorder" and not as quasi Judicial Officer and as such, the report submitted by the enquiry officer cannot be said to be fair and proper. The leanred advocate for the workman also in the written notes of argument has pointed out that there are number of defects in conducting the departmental enquiry against the workman. It was further submitted by the learned advocate for the workman that on 12.03.1998, the workman had applied to the Manager, Sillewara Colliery to allow him to resume duty, but he was not allowed to resume duty and no reply was also given to his application and the workman was kept under forced idleness from 12.03.1998 to 19.07.1999 without payment and the same can be said to be illegal victimization and against the principles of natural justice and as such, the workman is entitled for his wages from 12.03.1998 to 19.07.1999. It was further submitted by the learned advocate for the workman that the approval of the competent authority has not been obtained before imposing of the punishment against the workman, even though such approval is necessary, in view of clause 28.6 of the Certified Standing Order of Party No. 1 and second show cause notice was not given to the workman before imposition of the punishment and as such, the punishment imposed against the workman is illegal and not sustainable. In the alternative, it was submitted that the punishment is disproportionate and therefore, the punishment is to be set aside and the workman be taken on duty in any capacity.

7. Per contra, it was submitted by the learned advocate for the Party No.1 (in written notes of argument) that the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice and no case of perversity has been demonstrated by the workman and no specific instances has been cited to prove the perversity of the findings and the report of the enquiry officer is based on the evidence on record of the enquiry and he has given a rational report and he has not relied on any extraneous materials and his report is not contrary or opposed to the evidence and the report is not such, which no reasonable person could have arrived at and as such, the report of the enquiry officer cannot be said to be perverse and the punishment is justified in view of the misconduct committed by the workman and there is no ground to interfere with the same and the workman is not entitled to any relief.

8. It is to be mentioned here that most of the contentions raised by the learned advocate for the workman had been raised and considered at the time of deciding the issue of fairness or otherwise of the departmental enquiry and as such, there is no scope of reconsidering the said contentions again.

9. In this case, charge sheet was submitted on 17.06.1995 against the workman under clauses 26.24 and 26.30 of the certified standing order for remaining absent from duty with effect from 01.04.1994 without sanctioned leave or sufficient cause and habitual absence from duty without sufficient cause and the workman in his show cause dated 24.06.1995, admitted the fact of remaining absent, but took the plea of remaining absent due to illness. In his statement given before the enquiry officer also, the workman has categorically admitted the facts of his remaining absent from duty from 01.04.1994 to 12.02.1995 without any prior intimation to the authority. It is found from the materials on record that though the workman took the plea of illness, he failed to produce any document or evidence about his illness during the relevant period.

On perusal of the materials on record, it is found that this is not a case of no evidence or that the findings of the enquiry officer are against the evidence on record. The findings of the enquiry officer are based on the materials on record and not on any extraneous materials. The findings of the enquiry officer are also not as such, which cannot be reached by a prudent man on the materials on record. The materials on record show that the enquiry officer has assessed the evidence produced in the departmental enquiry in a rational manner and arrived at the findings. Hence, the findings of the enquiry officer cannot be said to be perverse.

10. So far the proportionality of the punishment is concerned, grave misconduct of remaining absent from duty without sanctioned leave or sufficient cause and habitual absenteeism from duty without sufficient cause have been proved against the workman in a properly

conducted departmental enquiry. Hence, the punishment of dismissal of the workman from services cannot be said to be shockingly disproportionate to the serious charges proved against the workman, calling for any intereference. Hence, it is ordered:—

ORDER

The action of the management of WCL through its General Manager, Nagpur Area, Jaripatka, Nagpur in dismissing Sh. Rajesh Kumar Babhut 'Loader' *w.e.f.* 20.07.1999 is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2057.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सेन्ट्रल माइनिंग, प्लानिंग एण्ड डिजानिंग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 41/2011-12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/181/2011-आई आर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2057.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2011-12) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Central Mine Planning & Design Institute Ltd., CMPDI Exploration Camp, Anandwan, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/181/2011-IR (CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/41/2011-12 Date: 01.04.2013.

Party No. 1 : The Regional Director,
Central Mine Planning & Design Institute Ltd., (CMPDI), Jaripatka, Nagpur-440014.

: The Officer-in-Charge,
CMPDI Exploration Camp, Anandwan, Post: Warora, Tah. Warora, Chandrapur.

Versus

Part No. 2 : The Secretary,
National Coal Organisation Employees Association, (CMPDI),
CMPDI Exploration Camp,
Anandwan, Chandrapur (MS).

AWARD

(Dated: 1st April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of CMPDI and their workman, Shri Laxman Z. Uike, for adjudication, as per letter No. L-22012/181/2011-IR (CM-II) dated 27.01.2012, with the following schedule:—

> "Whether the action of the management of CMPDI RI-V, Nagpur in awarding punishment of demotion from Cat. VI Driver-cum-Mechanic to Cat. II Truck Khalasi/Driver Trainee for the rest of approximately 13 years service period of Shri Laxman Z. Uike is legal & justified as per Company's Standing Orders? To what relief the workman concerned is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Laxman Z. Uike, ("the workman" in short), filed the statement of claim through the Union, "National Coal Organisation Employees Association (CMPDI)" ("the union" in short) and the management of CMPDI, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was working as a Category-VI driver-cum-mechanic in CMPDI exploration camp, Anandwan, under the control of Regional Institute-IV, CMPDI, Nagpur and he was demoted by order dated 04.01.1999 from category VI Driver-cum-Mechanic to Category II Truck Khalasi for one year for the alleged misconduct and the punishment awarded against him is harsh and such punishment against the penalties provided in sub-section (f) of section 27 of the Certified Standing Order of Party No. 1, and as such, the punishment was illegal and arbitrary and his punishment was further extended by another year by order dated 27.03.2000 and Party No. 1 continued him to work on the demoted post of Category-II Truck Khalasi till his raising of the Industrial dispute and the punishment awarded to an employee has to be for a specific period and cannot be extended arbitrarily.

The workman has prayed to answer the reference in his favour and to grant relief as deem fit and proper.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the claim as made by the workman is a stale claim and the same has been filed belatedly, after the superannuation of the workman and on that ground, the claim is liable to be rejected.

The further case of the Party No. 1 is that after holding the departmental enquiry against the workman, for the charge of consuming liquor during duty hours, the punishment was imposed on him on 2/4.01.1999 and the same was continued further *vide* order dated 23/27.03.2000 and the same was further confirmed *vide* order dated 27/28.02.2001 and the said orders of punishment were duly accepted by the workman without any protest and challenge and the workman has promoted on 11.02.2010 and 09.12.2011 and he was superannuated on 28.02.2012 and the workman had accepted the demotion order for more than ten years and thereafter, he also accepted the promotion orders, without any protest and as such, he cannot be permitted to challenge the same and by the initial order dated 2/4.01.1999, he was demoted, with the condition that the order of demotion would be withdrawn only, in case of improvement in his conduct, but the workman failed to improve his conduct and to give one more chance to the workman to improve his conduct, by order dated 23/27.03.2000, the punishment was extended for a period of one year, but still then, the workman failed to improve his conduct, so they were compelled to demote the workman by order dated 27/28.02.2001 and there is no provision either in the Standing Order or in any law that the demotion has to be for a limited period only and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the punishment imposed against him is not in accordance with the provisions of the Standing Order and the promotions given to him were normal promotions made through the departmental promotion committee and the promotions have no connection with the dispute under reference and the dispute was raised by the National Coal Organization Employees Association on 13.10.2006 and subsequent to the same.

5. It is necessary to mention here that as per orders dated 20.12.2012, the departmental enquiry conducted against the workman was held to be valied proper and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman has not challenged the legality of the departmental enquiry but has challenged the action of Party No. 1 in awarding punishment and the workman was demoted from Cat. VI Driver-cum-Mechanic to Cat. II Truck Khalasi and such punishment is in violation of the Certified Standing Order of Party No. 1 and sub-section (f) of section 27 of the Standing Order provides demotion to a lower stage or a lower grade in a time scale and it is clear from the same that punishment of demotion has to be awarded to a lower stage or a lower grade in a time scale and therefore, the workman should have demoted to Category V driver instead of Category II Truck Khalasi and such punishment must be for a specific period and therefore, the punishment awarded against the workman is illegal and the subsequent promotions given to the workman were normal promotions and the same have no connection with the dispute under reference and the workman through the union, "National Coal Organization Employees Assoication" raised the dispute on several occasions and as such, the workman is entitled to the difference of wages between category V and category II from January, 1999 with all consequential benefits.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was in habit of attending his duties under the influence of liquor and he had caused several accidents, while performing his duties and instead of imposing the harsh punishment of terminating his services, Party No. 1 gave several chances to the workman to improve his conduct, but the workman failed to do so, so Party No. 1 was constrained to initiate the departmental enquiry against the workman and the departmental enquiry was conducted observing all the principles of natural justice and the punishment was imposed in accordance with the Standing Order appliable to the workman and as the workman has not challenged the fairness of the departmental enquiry, in view of the settled preposition of law as laid down in the decision reported in (2008) I SCC-115 (UP State Road Transport Corporation Vs. Vinod Kumar), the Tribunal is precluded from deciding as to whether the charge is proved or not and for this reason, it cannot be decided as to whether the punishment imposed was proper or not and as the documents filed by the workman have not been proved in accordance with law, the same cannot be taken into consideration to decide the case on merits. It was further submitted by the learned advocate for the Party No. 1 that the claim is a stale claim as admittedly, the punishment was imposed upon the workman on 2/4.01.1999 and as the workman failed to improve his conduct, the punishment was continued *vide* order dated 23/27/03/2000 and due to the failure of the workman to improve his conduct, the punishment was confirmed by order dated 27/28.02.2001 and the workman accepted the punishment without any protest and joined his duties on the post to which he was demoted and continued to work in the demoted post and even if, the documents filed by the workman are considered, still then, it can be found that the workman raised protest against the punishment for the first time in 2006 *i.e.* after a period of almost more than 7 years and the workman chose to remain silent till he was superannuated from service and as the workman accepted the order of promotion twice and the retirement benefits, he is estopped from challenging the same and the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the Party No. 1 placed reliance on the decision reported in (2005) 5 SCC-91 (Haryana State Corporation Land Development Bank Vs. Neelam).

8. In this case all most all the facts are admitted by the parties. It is not disputed that the workman was working as a category VI Driver-Cum-Mechanic with the Party No. 1 and a departmental enquiry was conducted against him as per rules, for the charge of consuming liquor during duty hours and he was found guilty of the charges levelled against him in the enquiry and punishment of demotion to the post of category-II Truck Khalasi for one year was imposed against him by order dated 2/4.01.1999 and the said punishment was extended for one year more by order dated 23/27.03.2000 and again the punishment was extended for indefinite period by order dated 27/28.02.2001 and the workman was promoted to Driver (T) Cat. II and than to Driver Cat. V by order dated 09.12.2011. It is also not disputed that the workman raised the dispute through the union on 13.10.2006 and thereafter and the dispute was taken for consideration by Party No. 1 in the meeting held with the union on 21.11.2009 and Party No. 1 decided to examine the case of the workman. It is also not disputed that parties are bound by the provisions of the Certified Standing Order of Party No. 1.

9. First of all, I will take up the contention raised by the learned advocate for the workman that the punishment of demotion of the workman from category VI Driver-Cum-Mechanic to Category II Truck Khalasi was against the provisions of the Certified Standing Order and therefore the same is illegal and unjustified.

Before delving into the merits of contention raised above, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court in the decision reported in (2008) I SCC-115 (Supra), in view of the submission made by the learned advocate for Party No. 1 that as the validity of the departmental enquiry has not been challenged by the workman, there is no scope to consider about the quantum of the punishment. It is held by the Hon'ble Apex court in the above said decision that, "Labour Law-Industrial Disputes Act, 1947-S11-A-Interference by Tribunals and Courts-Scope-Where the workman removed from service and challenged only the conclusion reached by the enquiry officer and the quantum of punishment but not the legality or the fairness of the enquiry proceedings, held, Labour Court could not examine the findings of the enquiry officer and held that the charge was not proved."

In this case, admittedly workman has not challenged the legality or the fairness of the departmental enquiry. It is also found that the workman has not challenged the findings of the enquiry officer and he has challenged the quantum of punishment. So there is no question to examine about the findings of the enquiry officer.

It is the admitted case of the parties that section 27 of the Certified Standing Order provides penalties for misconduct and sub-section (f) of section 27 provides the penalty of demotion. According to sub-section (f) of section 27 of the Certified Standing Order, demotion of an employee can by made either to a lower stage or a lower grade in a time scale. On perusal of the cadre scheme for drivers of Party No. 1, it is found that the lower stages of category VI driver-cum-mechanic are category-V driver and then category-II Driver (Trainee), where as the lower grade of category VI driver-cum-mechanic is category-II Lorry helper/cleaner. As sub-section (f) of section 27 of the Standing Order provides for demotion to lower grade also, it is found that the order of punishment of demotion of the workman as Truck Khalasi-Cat.II (Lorry helper - Category-II) for one year imposed against the workman as per order dated 2/4.01.1999 cannot be said to be in violation of the Standing Order or that the same is illegal and unfair.

10. On perusal of the materials on record and taking into consideration of the facts and circumstances of the reference, it is found that the claim raised by the workman cannot be said to be a stale claim or that the claim of the workman was hit by the principles of estoppels, waiver and acquiesunce of the doctorine of sub-silentio. It is well settled that the aim and object of the Act is to impart social justice to workman. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the case referred in the decision reported in (2005) 5 SCC-91 (Supra), with respect, I am of the view that the said decision has no clear application to the present case in hand.

11. It is not disputed that the Party No. 1 by order dated 23/27.03.2000 extended the punishment imposed upon the workman by order dated 2/4.1.1999 for one year more. Such order was passed without giving any opportunity to show cause to the workman. Such order was also passed beyond the period of one year of the punishment imposed initially *w.e.f.* 04.01.1999. There is no provision in the Standing Order for extension of the punishment by the Party No. 1 against a delinquent employee. Likewise, the order dated 27/28.02.2001 passed by Party No. 1 extending the punishment against the workman for indefinite period is also found to be without any power, jurisdiction or provision. The said order was also passed without giving any opportunity to the workman to show cause or to have his say. From the materials on record, it is found that the orders passed by Party No. 1 on 23/28.03.2000 and 27/28.02.2001 are without jurisdiction and in violation of the provision of the Standing Order. Therefore, the said orders cannot be sustained.

12. Now, the question remains for considertion is as to what relief or reliefs the workman is entitled to. During the course of argument, it was submitted by the learned advocate for the Party No. 1 that in case it is found that the

punishment imposed against the workman was not in accordance with the Certified Standing Order, then the matter be remitted back to the disciplinary authority to reconsider what other punishment should be imposed. In support of such contentions, the learned advocate for the Party No. 1 placed reliance on the decision reported in 2007 (2) Mh. L.J-674 (Press Trust of Employees Union *Vs.* Press Trust of India Ltd.).

Admittedly, the workman has alrady been retired from services of Party No. 1 on 28.02.2012 on superannuation. He had already undergone the punishment imposed against him. So, there is no question of remitting back the matter to the disciplinary authority to reconsider as to what other punishment should be imposed. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the case referred in the decision cited by the learned advocate for the Party No. 1, with respect, I am of the view that the said decision has no application to the case. In view of the facts mentioned above, it is found that the workman is entitled to monetary benefits. As it is found that the orders passed by Party No. 1 dated 23/28.03.2000 and 27/28.02.2001 are illegal, the workman is entitled to be treated as a category-VI, Driver-Cum-Mechanic *w.e.f.* 04.01.2000 notionally and he is also entitled for the consequential reliefs including further promotions till the date of his retirement *i.e.* 28.02.2012. The workman is entitled to get the difference of wages between category VI and Category II from 04.01.2000 and the difference of wages he is entitled for the consequential relief thereafter. Hence, it is ordered:

ORDER

The action of the management of CMPDI RI-V, Nagpur in awarding punishment of demotion from Cat. VI Driver-Cum-Mechanic to Cat.II Truck Khalasi/Driver Trainee for the rest of approximately 13 years service period of Shri Laxman Z. Uike is illegal & unjustified as per Company's Standing Orders. As the workman has already been retired from services of Party No. 1 on 28.02.2012 on superannuation, he is entitled for monetary benefits. As it is found that the orders passed by Party No. 1 dated 23/28.03.2000 and 27/28.02.2001 are illegal, the workman is entitled to be treated as a category VI Driver-Cum-Mechanic *w.e.f.* 04.01.2000 notionally and he is also entitled for the consequential reliefs including further promotion till the date of retirement, *i.e.* 28.02.2012. The workman is entitled to get the difference of wages between Category VI-Driver-cum-Mechanic and Category II-Truck helper *w.e.f.* 04.01.2000 and difference of wages he is entitled for the consequential reliefs thereafter. The Party No. 1 is directed to carry out the award within one month of the date of publication of the award in the Official Gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2058.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 46/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/115/2004-आई आर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2058.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Majri Area Kuchana of Western Coalfields Limited, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/115/2004-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM- LABOUR COURT, NAGPUR

Case No. CGIT/NGP/46/2005 Date: 01.04.2013

Party No.1 : The Chief General Manager,
Majri Area Kuchana of WCL,
Post-Shembul,
Distt. Chandrapur (MS).

Versus

Party No. 2 : The President,
Lal Zanda Coal Mines Mazdoor Union,
(CITU), PO: Majri Area,
Regional Office: Main Road,
Majri Colliery, Post: Shivajinagar,
Tah-Bhadrawati, Distt. Chandrapur.

AWARD

(Dated: 1st April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workmen, Shri Bhaiyaram Samunder, Ramji Prasad, Atmaram Chironji and Harhangi

Badri for adjudication, as per letter No. L- 22012/115/2004-IR (CM-II) dated 17.05.2005, with the following schedule:—

> "Whether the action of the management in relation to Majri Area of Western Coalfields Limited in reducing the wages of S/Shri Bhaiyaram Samunder, Ramji Prasad, Atmaram Chironji and Harhangi Badri by fixing their pay at mid point of Cat. V in pursuance of Office Order No. WCL/MA/SM/TOCP-SA/PER/2000/360(A) dated 27.05.2000 is legal & justified? If not, to what relief the workmen are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Lal Zanda Coal Mines Mazdoor Union (CITU)", ("the union" is short) filed the statement of claim on behalf of the above four workmen and the management of WCL, ("Party No.1" in short) filed its written statement.

The case of four workmen as presented by the union in the statement of claim is that all the four workmen were piece rated workmen and they were transferred from Pench Area and Kanhan Area to Majri Area as Dumper operator on administrative grounds and workmen, namely, Shri Bhaiyaram Samunder, Shri Ramji Prasad and Shri Harhangi Badri were transferred from Ambla Colliery of Kanhan Area and posted at Telwasa open cast mine of Majri Area *w.e.f.* 29.06.1998, 23.06.1998 and 30.06.1998 respectively as Dumper operator and workman, Shri Atmaram Chironji was transferred from Dumua colliery of Kanhan Area and posted in Telwasa open cast mine of Majri Area *w.e.f.* 23.08.1998 and all the four workman responded to an offer made by Party No.1 through notice board to the effect that workmen, possessing Heavy Motor Driving Licence may apply for the post of Dumper operator, but there was however, no mention in the said notice that those accepting the offer shall not be given pay protection of piece rated workman and all the four workmen were initially granted pay protection as per LPC and they were given basic pay @ Rs. 246.37 till 1.12.1999, but suddenly by a notification dated 25.07.2000, their pay came to be fixed @ Rs. 175.90, as a result of which, there was a net loss of Rs. 60.67 to their pay packet and no conceivable nexus or sound reasoning was advanced by the Party No.1, for fixing the basic wages of the four workmen in the lower stage, without notice and the impugned action was taken arbitrarily and in colourable exercise of employee's right and without due application of mind. The further case of the workmen as presented by the union is that Shri Bhaiyalal Bhikhari, who was identically transferred to Pipalgaon Sub Area of North Wani Area has been granted pay protection of his erstwhile piece rated job and such fact is clearly eflected in his pay slips and thus, it can be found that Party No.1 has adopted discriminatory and pick and choose tactics in the matter to granting pay protection of the workmen and other wise also, the impugned action of reducing the basic pay of the workmen consequent to their transfer is wholly illegal and unjustified and they are entitled to get protection of their erstwhile basic pay, which they were receiving till 01.12.1999 with arrears of back wages.

3. The Party No.1 in their written statement have pleaded *inter-alia* that the workmen have challenged the office order dated 27.05.2000 by raising the present dispute and as such, the reference is highly belated and is not maintainable and the workmen are not the members of the union and therefore, the union has no locus standi to raise the dispute and the dispute has been raised by the union without any authority and the dispute was initially raised by the General Secretary, RKKMS (INTUC), Nagpur and a reply was given by them to the General Secretary, RKKMS and having satisfied with the contention of the management, the RKKMS union dropped the dispute and the present union has raised the dispute without any rhyme and reason. The further case of the Party No.1 is that the terms and conditions of employment for the employees working in coal industry and governed by various settlements, generally known as NCWAs and cadre schemes have been formulated under the provisions of NCWA giving promotion channel for all cadres and in the cadre of excavation personnel, the designation, the scale of pay, minimum qualification (education/technical) eligibility for promotion and mode of promotion/selection/aptitude etc. are given and there is no cadre scheme for carrier growth of the employees working in general mazdoor category/piece rated employees and therefore, as and when vacancies arise in different cadres, opportunity is being given to the eligible employees who are deployed in general mazdoor/piece rated category for the same and they had displayed a notice informing the workers working as loaders that the employees possessing heavy motor driving licence and are interested to work in wardha vally Mines, North Wani, Chandrapur, Wani, Majri and Ballarpur can apply upto 25.12.1997 and the four workmen applied for the same and on the basis of their applications, they were transferred to Majri Area and were appointed as Dumper opeator trainee in cat. V and their wages were fixed at mid point of cat. V and there was discussion between the management and the recognized union in regard to pay fixation/pay protection in case of conversion/selection from the post of piece rated to time rated and as per the record note of discussion dated 31.10.1995, "All such piece rated workers who have given or may give option for time rated/monthly rated jobs or in case of their selection through international notification for any time rated/monthly rated jobs, will be fixed of the commensurate category for which they opt in time rated only and no personal pay will be allowed *w.e.f.* 01.11.1995. (2) In case of monthly rated and excavation, where rates are higher than piece rated the mid point fixation will not be applicable. (3) Hence forth the piece rated jobs will be paid as per the nature of work performed by them." And the said record note of discussion was circulated by

letter dated 17.11.1995 and as instances of adopting of different formula by different units regarding fixation of basic pay in respect of Tub loader, who were put to the job of Dumper operator came to their notice, the Area Manager issued office memo dated 07.02.1999 in regard to fixation of pay in such cases and as per the provisions of NCWA, when the employees working on daily rated or piece rated basis opt to seek direct recruitment to a post carrying the pay scale, they cannot have any pay protection and their pay will be fixed in the pay scale prescribed for the aforesaid post. It is further pleaded by the Party No.1 that the workmen were not transferred on administrative grounds and the workmen themselves opted for selection to a post where there is carrier growth and as such, there was no question of granting them protection of pay and the workmen were given the pay, which they were drawing till their pay was finally fixed, as per the settlement dated 31.10.1995 and there was no discrimination in fixation of pay of their employees and the pay of the workmen was fixed in accordance with the settlement arrived with the recognized union and the workmen are not entitled to any relief.

4. Besides placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective claims. Shri K.P. Bansod, the President of the Union was examined as a witness on behalf of the workmen. From the side of Party No.1, Shri Sudhakar Pandurang Wandhe, a Deputy Manager (Personnel) was examined as a witness.

In his examination-in-chief, which is on affidavit, the witness, Kailesh P. Bansod has reiterated the facts mentioned in the statement of claim. In his cross-examination, this witness has admitted that all the four workmen were working as piece rated worker in Pench Area and no cadre scheme has been formulated for piece rated workers.

The witness examined on behalf of Party No.1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has stated that the list of the members of the union in question has not been filed.

5. In this case, it is not disputed by both the parties that all the four workmen were working as piece rated workers and they made application for the post of Dumper operator in response to the notice given by Party No.1 dated 20.12.1997 and Party No.1 considered their applications and selected them for the posts of dumper operator and posted them as dumper operators in Majri area, where such posts were available and they were granted pay protection till 01.02.1999, but by notification dated 25.07.2000, such protection was withdrawn.

In view of such admitted facts and the documentary evidence placed in record by the parties, the oral evidence adduced by the parties is of no help to decide the dispute in question.

6. At the time of argument, it was submitted by the learned advocate for the wokmen that the selection and posting of the four workmen as dumper operators was on administrative ground and in the notice given by Party No.1 dated 20.12.1997 (Ext. M-2), nothing was mentioned about not giving protection of pay to those workers, who would accept the offer and had there been such a condition, the workmen should not have accepted the offer and the four workmen were given protection of their basic pay @ Rs. 246.37 till 01.12.1999, but suddenly, by letter dated 25.07.2000, pay of the workmen came to be fixed @ Rs. 175.90, as a result of which, there was a net loss of Rs. 70.60 to their pay packets and such a reduction of pay without affording any opportunity of hearing is totally illegal and unsustainable in law and as the settlement in question has no application, as the transfer of the workmen was administrative transfer on exigency of work and Party No.1 in the case of Shri Bhaiyalal Bhikhari, who was identically transferred to Pipalgaon sub area of North Wani area has granted pay protection and Party No.1 has adopted discriminatory and pick and choose tactics in the matter of granting pay protection to the workmen and the workmen are entitled to pay protection.

7. Per contra, it was submitted by the learned advocate for the Party No.1 that the workmen were not transferred on administrative grounds, but the workmen submitted applications in response the notice, M-2, for their appointment to the post of dumper operators and there was no compulsion for them to apply for the same and the workmen, opted for their selection to a post, where there was carrier growth and as such, there was no question of granting them pay protection and there was no service condition, guide lines or policy to give pay protection to piece rated workers in case of their opting for selection to different cadre and the four workmen were given the pay, which was being drawn by them, till their pay had been finally fixed, as per the settlement dated 31.10.1995 (M-7) and there was no discrimination by Party No.1 and the pay of the workmen was rightly fixed in accordance with the settlement arrived at with the recognized union and the workmen are not entitled to any relief.

8. In view of the admitted facts as already mentioned above, now, it is only to be considered as to whether the workmen are not entitled for protection of their basic pay of piece rated loader in view of the settlement dated 31.10.1995 (M-7).

On perusal of the so called settlement, M-7, it is found that the same is not a settlement at all, but the same is a record note of discussion held between the management of WCL and RKKMS union on 31.10.1995 at Nagpur. Moreover, judicial notice is necessary to be taken that there are five major unions including RKKMS in the coal

industry including WCL, with whom, negotiations and settlement are being made by the coal industry. So, any settlement arrived at by the management of WCL with only the RKKMS union cannot bind all the employees of WCL. As the so called settlement dated 31.10.1995 in fact is not a settlement in the true sence, it is held that the same is not binding on the workmen. Moreover, there is also provision in clause 5 of the said settlement about protection of pay of piece rated workers. Clause 5 of the said settlement reads as follows:—

> "Such piece rated workmen who may be put in time rated/monthly rated in future by managerial decisions *i.e.* without, seeking option for time rated/monthly rated or without going through the selection process against internal notification for time rated/monthly rated, will continue to get protection of piece rated wages. Such piece rated workmen who come 77 to TR as per option given by them will not get this benefit."

On examination of the case of the workmen with the provisions of the aforesaid clause 5, it is found that the appointment of the workmen as dumper operators from piece rated workers was after going the process of selection against internal notification. The case of the workman is also not a case of giving option of their conversion from piece rated to time rated workers. Hence, the putting of the four workmen in time rated is held to be by way of managerial decision. Therefore, all the four workmen are entitled for protection of their basic pay of piece rated loader. Hence, it is ordered:—

ORDER

The action of the management in relation to Majri Area of Western Coalfields Limited in reducing the wages of S/Shri Bhaiyaram Samunder, Ramji Prasad, Atmaram Chironji and Harhangi Badri by fixing their pay at mid point of Cat. V in pursuance of Office Order No. WCL/MA/SM/TOCP-SA/PER/2000/360(A) dated 27.5.2000 is illegal & unjustified. The four workmen are entitled for protection of their basic pay of piece rated loaders with full back wages and consequential benefits.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2059.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 76/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/86/1998-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2059.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 76/2000 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., Nagpur Area, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/86/1998-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P .CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT /NGP /76/2000 Date: 17.04.2013.

Party No. 1 : The Sub Area Manager,
WCL, New Majri Underground
Sub Area
of WCL, PO: Shivajinagar,
Distt. Chandrapur(MS)

Versus

Party No. 2 : Koyla Khadan K. Sangh,
President, K.K.K.S., Chandrapur,
Jatpur Ward No.4, Chandrapur (MS)

AWARD

(Dated: 17th April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Mangru Ragho, to CGIT-Cum-Labour Court, Mumbai No. 2 for adjudication, as per letter No. L-22012/86/98-IR (CM-II) dated 27.01.1999, with the following schedule:—

> "Whether the action of the management of WCL, New Majri underground Sub Area, in terminating the services of Shri Mangru Ragho is legal & justified? If not, what relief is the workman concerned entitled?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mangru Ragho, ("the workman" in short), filed the statement of claim and the management of WCL, ("Party No.1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that he was working as an underground loader in Majri Mine No.3 and while performing duties in the underground, he met with accident twice, within a span of five years and he was hospitalized for about nine months and due to the accidents, he was not in a position to perform the duties of a loader in the underground and after getting cured, he met the Manager of the Mine and requested for light job and he was provided with light job for few days and in this way, Party No. 1 provided him light job from time to time, up to the year, 1996 and he had submitted the medical certificate to the Party No. 1, in which the doctor had recommended to provide him light job alongwith his application for providing light job, but light job was not provided to him continuously and he was harassed by Party No. 1 and as light job was not provided to him, he approached the ALC (Central), Chandrapur, but Party No. 1 instead of providing him light job, terminated his services on 30.03.1997, without giving him any notice of the enquiry and as the termination is illegal, he is entitled for reinstatement in service with full back wages.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the workman, who was working as a Tub-loader was in habit of remaining absent from duty without intimation or permission or sanctioned leave and they were always taking a lenient view in the matter and instead at availing such opportunities to improve himself, the workman took the same as a matter of right and as the workman remained absent from duty from 01.03.1996, without intimation, grant of leave or satisfactory cause, charge sheet dated 11.08. 1996 was issued against him and the workman submitted his reply to the charge sheet on 27.12.1996 and as his reply was unsatisfactory, the competent authority decided to conduct a departmental enquiry on the charge sheet dated 11.08.1996 and accordingly by order dated 23.02.1997, Shri A.N. Naik was appointed as the enquiry officer to conduct the enquiry and inspite of the notice issued by the enquiry officer by registered post with acknowledgement due dated 02.03.1997 to the workman in his permanent address and display of a copy of such notice in the notice board, the workman did not attend the enquiry, so the enquiry proceeded against him exparte and on completion of the enquiry, the enquiry officer submitted his report on 21.03. 1997, holding the charges to have been proved against the workman and the competent authority taking into account the seriousness of the misconduct committed by the workman, *vide* order dated 30.03.1997 imposed the punishment of termination of his services and their action in terminating the services of the workman is legal and proper and the punishment is proportionate to the misconduct committed by him.

It is further pleaded by the Party No. 1 that the workman did not suffer any disablement nor there was any recommendation of the medical board to provide him light job and as such, light job could not be granted to the workman and the workman without any rhyme or reason was requesting for light job and he was given an opportunity of being heard on his application and he could not satisfy them for his demand to provide him light job, so his request was rejected and the same cannot be taken as a reason for remaining absent from duty by the workman, without permission and sanctioned leave for unlimited period and the workman is not entitled to any relief.

4. As this is a case of imposition of punishment against the workman after holding of a departmental enquiry, the validity or otherwise of the enquiry was considered as a preliminary issue and *vide* order dated 02.04.2007, it was held that the enquiry was conducted against the principles of natural justice and the enquiry was vitiated and Party No. 1 was allowed to prove the charges before the Tribunal.

5. To prove the charge against the workman, Party No. 1 examined four witnesses, namely, Shri Ram Awadhsingh, Shri A.N. Naik, Shri Fauzdar Singh and Shri D.C. Gupta.

In rebuttal, the workman has examined himself as the only witness.

So, from the evidence on record, now, it is to be considered as to whether the Party No. 1 has been able to prove the charges against the workman.

6. The allegation made against the workman is that he remained absent from his duty without any grant of leave or intimation to the competent authority,from 01.03.1996 and his such act constituted misconduct under clause 26.30 of the Standing Order, clause 26.30 of the Standing Order reads as follows:—

> "Absence from duty without sanctioned leave or sufficient cause or overstaying beyond ten days after sanctioned leave."

It is also necessary to mention here that the charge sheet was submitted on 11.08.1996.

7. The first witness for the Party No. 1 has stated that he was working as the wage clerk in Majri colliery Mine No.3 and was maintaining the Form 'G' register and bonus for the year 1996 was not paid to the workman, as he remained absent from 01.03.1996 to 29.03.1997. In his cross-examination, this witness has stated that he cannot say the reason as to why the workman remained absent and the workman met with an accident on 02.05. 1988,while working in the mine.

The 2nd witness, Shri A.N. Naik was the enquiry officer in the enquiry held against the workman. In his examination -inchief, this witness has stated about holding of the enquiry against the workman and submission of his enquiry report holding the workman guilty of the charges. It is to be mentioned here that as the departmental enquiry

has already been held to be illegal, the evidence of this witness is of no avail to prove the charge against the workman.

Shri Fauzdar Singh, the witness No.3 for the Party No. 1 has stated that he was the attendance clerk of Majri Mine No.3 and his duty was to mark the attendance of the underground worker in "Form C register" and the workman was absent from duty from 01.03.1996 to 29.03.1997 and during the period of absence, the workman neither submitted any application for leave nor any leave was sanctioned to him and the workman also did not give any information about his absence. In his cross-examination, this witness has stated that the attendance register, Ext. M-I is the register relating the workman working underground and the same is not the attendance register of the workers working on surface.

The evidence of the witness Shri D.C. Gupta is in the line of the facts mentioned in the written statement. In his cross-examination, this witness has admitted that in his show cause to the charge sheet, the workman had mentioned that due to the injuries sustained in the accident, he was unable to work underground and he was provided with light job for the said reason and whenever, management was not providing him light job, he was bound to sit idle in his house. Demolishing the allegation made in the charge sheet that the workman remained absent from 01.03.1996, this witness in his cross-examination has stated that the workman remained absent from 27.03.1996.

8. The workman in his evidence on affidavit has stated that due to the injuries sustained by him in the accidents, he was not fit to work in the underground and he was granted light work on surface from time to time in between the period from 1988 to 30.05.1996 and management stopped to give him light work and marked him absent from duty, even though he was regularly going to work.

9. On perusal of the evidence on record, it is found that in the charge sheet, though it has been mentioned that the workman remained absent from duty from 01.03.1996, nothing has been mentioned as to up to what date he remained such absent. From the evidence on record including the documents, it is clear that Party No. 1 considering the physical condition of the workman and taking into consideration his inability to work underground, provided him light work from time to time beginning from the year 1989 to 23.05.1996. Though according to the allegations in the charge sheet, the workman remained absent without any intimation or sanctioned leave, it is clear from the evidence on record that the workman was provided light work on surface from 15.05.1996 to 22.05.1996 and 23.05.1996 to 30.05.1996 and the workman worked for those days on surface. It is clear from the evidence on record that the charges levelled against the workman are prima facie not correct. It is also found that Party No. 1 has failed to prove the charge against the workman. Hence, the workman cannot be held guilty of commission of the misconduct of unauthorized absenteeism. In view of the facts and circumstances of the case as mentioned above, with respect, I am of the view that the decisions cited by the learned advocate for the Party No. 1 have no clear application to the present case.

10. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled. As the Party No. 1 has failed to prove the charges against the workman, the workman is entitled for reinstatement in service with continuity and consequential benefits. So far the back wages is concerned,in my considered view, payment of 25% of the back wages will meet the ends of justice in this case. Hence, the workman is entitled for 25% back wages from the date of termination of his services till the date of his reinstatement in service. Hence, it is ordered:—

ORDER

The action of the management of WCL, New Majri underground Sub Area, in terminating the services of Shri Mangru Ragho is illegal & unjustified. The workman is entitled for reinstatement in service with continuity and all consequential reliefs. The workman is entitled for 25% back wages from the date of termination of his services till the date of his reinstatement in services. Party No.1 is directed to carry out the award within 30 days of publication of the award in the official gazette.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2060.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद के केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 250/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/152/2003-आईआर (सीएम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2060.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 250/2003) of the Cent.Govt.Indus.Tribunal-cum-labour court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/152/2003-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/250/2003 Date: 02.04.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgatye,
Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Sanjay Bhimrao Gajre, for adjudication, as per letter No. L-22012/152/2003-IR (CM-II) dated 09.11.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Sanjay Bhimrao Gajre, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sanjay Bimrao Gajre, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 02.09.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more then 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of

the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 02.09.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the worman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torchi, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that he was sent by Singh Security Services to the FCI and the contractor has not been made a party to the proceeding and FCI had not issued any appointment order and they were told that there was a contractor and the contractor would engage them under his contractorship and they had not applied to the FCI. The workman has further admitted that he has not filed any document showing that he had worked in the year 1993 and he has also not filed any document to show that he worked for 240 days in a year and he has not filed any document showing that the management paid the amount to them and though the contractors were changed after every two years, they were given regular duty. The workman has further admitted that in his affidavit it is correctly mentioned that the contract was discontinued *w.e.f.* 23.03.1999 and they were terminated *w.e.f.* 14.03.1999 and they were appointed on 02.09.1993 by Singh Security, Nagpur.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No.1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 02.09.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt.Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s. Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/s. Security services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continously in FCI from 02.09.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s. Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions from the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 02.09.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employees of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesmam Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims

made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303—6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hob'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water front Workers and Others (reported in 2001 (7) SCC1, the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

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In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labourers, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The Workman of the Food Corporation of India Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
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> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer, Section 2(1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to

impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165=(1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of

service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". "The expression" employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the Union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principal that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on

issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999 D/- 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/- 9-5-1997(Cal): W.A. Nos. 345—354 of 1997m, D/- 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/- 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the

Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and cirmustances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2061.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 251/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.09.2013 को प्राप्त हुआ था।

[सं॰ एल-22012/153/2003-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi the 2nd September, 2013

S.O. 2061.—In pursunace of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 251/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/153/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/251/2003 Date: 02.04.2013.

Party No. 1(a): The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No. 1(b): The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgatye,
Mumbai-400020.

Party No. 2: The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar,
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt, Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Bhawrao Shanker Rao Sabale, for adjudication, as per letter No. L-22012/153/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Bhawrao Shanker Rao Sabale, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Bhawrao Shanker Rao Sabale, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.08.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed

and the workman was not in their service uniterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.08.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No.1 and their attendance was being taken by Party No.1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No.1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 01.08.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence

Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s. Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that in spite of change of the contractors, the workman worked continuously in FCI from 01.08.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s. Industrial Security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the party no.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs*. Eight Industrial Tribunal, West Bengal & Ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No.1 till 14.03.1999 and the Party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and. has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a

necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. lt was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'bIe High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'bIe High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki Vs. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat Vs. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. Vs. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.7.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and Others *Vs.* National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

** ** ** **

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was

made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishmnet," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 privides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed

and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a respresentative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contrator to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to be contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers in discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165= (1985) I SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refunery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd., and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the

appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'bIe Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person' including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC -3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in

Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an, interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1), of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to, deprive, the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if, necessary, by relaxing the condition as to, maximum 'age appropriately taking into consideration the, age of. the workers at the time of their initial employment by the contractor and also relaxing the 'condition as to academic qualifications other, than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997 (Cal): W.A. Nos. 345-354 of 1997m D/ -17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ -2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ -23-12.1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A *fortiori* much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1. or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that

regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No. 1. to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No.1. had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularization in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No.1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No.1 paid his wages as their employee. It is clear from the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No.1 and the workman. Hence, there was no question of termination of the services by the Party No.1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2062.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 252/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/154/2003-आई आर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2062.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 252/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/154/2003-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND. PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/252/2003 Date: 02.04.2013.

Party No.1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgate,
Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No.2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 2nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Vilas Tryambak Tale, for adjudication, as per letter No.L-22012/154/2003-IR (CM-II) dated 08.12.2003, with the following schedule:

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Vilas Tryambak Tale, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Vilas Tryambak Tale, ('the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No.1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 04.03.1994 and he was initially engaged through a contractor at Akola Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages. The further case of the workman is that in 1994, he was engaged by the Party No.1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No.1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No.1 and he was a regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No.1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No.1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No.1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed

and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 04.03.1994 to14.03.1999 without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home Guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as *res-judicata* and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as Torch, Lathi, Whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No.1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No.1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 04.03.1994. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from

01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s. Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 01;03.1993 and M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 04.03.1994 till 4.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s. Industrial Security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 04.03.1994 at Akola Depot as a security guard and the worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25- F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03-05-2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No.1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 1 CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer. and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31-12-1998 and though Party No. 1 unilaterally extended the contractor, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act.. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and. has not been able to prove their claim that the-workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. l that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a

necessary party and in spite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour systems. Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'bIe High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'bIe High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'bIe High Court operates as *res-judicata* between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'bIe Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs*. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs*. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs*. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs*. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs*. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocte for the Party No. 1 that the present reference is hit by the principles of *res-judicata,* due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularization on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs*. National Union water front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly the main prayer to absorb them cannot be granted.
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> ** ** ** **
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, thus petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of *res-judicata*. So, there is no force in the contention raised by the learned advocate for the Party No.1.

10. In this reference, it is never the case of the workman, that, he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a

contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No.1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which is reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
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> 3. The "Contract Labour" has been defined in Section 2(1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within

the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *Vs.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs.* Indian Oil Corporation Ltd. 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation

or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do ……..". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs*. State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC -3656 (supra) the Hon'bIe Apex Court have held that:

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and

12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case. 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ -12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ -17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ -2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, contention cannot be entertained. Moreover, it

is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No.1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11 /89 /LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No.1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No.1 paid his wages as their employee. It is clear from the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No.1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No.1 and the workman. Hence, there was no question of termination of the services by the Party No.1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2063.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 253/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/155/2003-आई आर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2063.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 253/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/155/2003-IR (CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/253/2003 Date: 02.04.2013

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai -400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No.2, Near Boudha Vihar ,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Dinesh Surajpal Singh Thakur, for adjudication, as per letter No. L-22012/155/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Dinesh Surajpal Singh Thakur, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Dinesh Surajpal Singh Thakur ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 01.08.1993 and he was initially engaged through a contractor at Akola Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as, required, under section 25-F of the Act and after his illegal termination, fresh hands from the department of Home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No.1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No.1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No.1 and he was a regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No.1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No.1 was supervising his work through their officers and he had no relation with the so-called contractors engaged by the Party No.1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No.1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they

were not the employer of the workman and the, services of the workman were never utilized by them as employer from 01.08.1993 to14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing Security Guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with foodgrains, then only, services of the Security Guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police Personnel as Security Guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of Security Guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of Security Guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No.1 and their attendance was being taken by Party No.1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through Contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No.1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross examination, this witness has admitted that the workman was appointed on 01.08.1993. He has also admitted the suggestions given to him in his cross-examination that supply of Security Guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of Security Guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s. Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/s Security services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that in spite of change of

the contractors, the workman worked continuously in FCI from 01.08.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s. Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Akola depot as a Security Guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25- H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so-called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so-called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007 an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but in spite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I- CLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & Ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so-called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and in fact the so-called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as Security Guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the Party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so-called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without ahy contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs*. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs*. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs*. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and, has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a Security Guard and as such, the concerned contractor is a necessary party and in spite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure

of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of Security Guards and due to the notification of the Government for abolition of contract labour system, Home Guards and Police Personnel were appointed as Security Guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002) (M/s. Essen Deinki *Vs*. Rajiv Kumar), Appeal (Civil) 6303—6316 of 2003 (Manager, RBI, Bangalore *Vs*. S. Mani), Appeal (Civil) 6511 of 2005 (Surendranagar District Panchayat *Vs*. Dayachai Amar Singh), Appeal (Civil) 3639 of 2006 (Krishna Bhagaya Jala Nigam *Vs*. Md. Raffi) and Appeal (Civil) 2969 of 2004 (Rajasthan State Gangasagar Mills Ltd. *Vs*. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India, and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'bIe High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and Others *Vs*. National Union Water Front Workers and others [reported in 2001 (7) SCC 1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'bIe High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No.I.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a Security Guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification

on 1.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'bIe Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The Workman of the Food Corporation of India *Vs* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and Others Vs. National Union Water Front Workers and Others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'bIe Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by

him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract, labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new

contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I -LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC -3656 (Supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ -12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ -17-4-l998 (Kant): W.P. No. 4050 of 1999, D/ -2-8-2000 (Born) and W.P. No. 2616 of 1999, D/ -23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No.l, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the Parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976,

then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning. dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2064.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 254/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/156/2003-आई आर (सीएम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2064.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 254/2003 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/156/2003 - IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/254/2003 Date: 02.04.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgate, Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management Food Corporation of India and their workman, Shri Vijay Shridhar Borkar, for adjudication, as per letter No.L-22012/ 156/2003- IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating

the services of Shri Vijay Shridhar Borkar, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Vijay Shridhar Borkar, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No.1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 02.09.1993 and he was initially engaged through a contractor at Akola Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the, appointment of contract labour as contemplated under Section 10 of the Contract Labour (Regulation and Abolition Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No.1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was, no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 02.09.1993 to14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in

pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the dcision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No.1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his cross-examination, in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 02.09.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years, and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992 to M/s Security Services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 02.09.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 02.09.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the

Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No.l.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I- CLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal) Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party no. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No.l, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and. has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and in spite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and .there was no relationship of master and servant between' the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of Contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police Personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon 'bIe High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and

as such, there was no question of compliance of section 25- F or 25- H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs*. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'bIe High Court, Nagpur Bench in W. P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon 'bIe High Court did not grant such relief. On perusal of the order passed by the Hon'bIe High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front workers and others (reported in 2001 (7) SCC 1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority 'for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 'to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No.1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'bIe Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs

to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. 'Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in the Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub- contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor", Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of conttact labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated

as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it can not be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated, that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the' new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the Corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.... ". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense

of a relationship brought about by expres. or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an emplyment of his by the employer and that there should be a relationship between the employer and employee' or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC -3656 (supra) the Hon 'bIe Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ -12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997 (Cal): W.A. Nos. 345- 354 of 1997m D/ -17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ -2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ -23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establispment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a

workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No.l, there is no need to draw any adverse inference. As the facts and circumstnces of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor anything has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No.1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92 Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No.1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No.1 paid his wages as their employee. It is clear from the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No.1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No.1 and the workman. Hence, there was no question of termination of the services by the Party No.1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2065.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 255/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/157/2003-आई आर (सी एम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2065.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 255/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/157/2003-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/255/2003 Dated: 02.04.2013

Party No. 1(a): The District Manager,
Food Corporation of India,
Ajani, Nagpur
Nagpur-440015.

Party No.1(b): The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan,
Dinshaw Wacha
Road, Churchgate,
Mumbai-400020.

Party No.2: The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar ,Ward No. 2,
Near Boudha Vihar,
Post: Wardha,
Distt. Wardha (M.S.)

AWARD

(Dated: 2nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Vikas Mahadev Kharat, for adjudication, as per letter No.L-22012/157/2003-IR (CM-II) dated 08.12.2003, with the following schedule:-

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Vikas Mahadev Kharat, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Vikas Mahadev Kharat ('the workman' in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.08.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after very two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from

time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the party No. 1 to abolish the contract labour system in all places and mangement of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no quesiton of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.08.1993 to 14.3.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no quesiton of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing secutiry guards was given to other Government Agencies like Police Personnel and Home Guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notificaiton issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police Personnel as security guards.

The further case of party no. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointement of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party No 1 is that the appropriate government decided to abolish the employement of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the secutiry contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the direcitons given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling applicaiton and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary silp and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 01.08.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May 1992, to M/s Security Services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 01.08.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s Industrial Security and Fire Services, Bombay by F.C.I. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the party No. 1 and he was never a contract labour and such action of the party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the party No.1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the party No.1 nor the so called contractors engaged by the party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not

contractors and even though there was legal ban on engagement of contract labourers, the party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the party No.1 and the party No.1 is the real employer and there was master and servant relationship between the party No.1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party No.1 till 14.03.1999 and the party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of party No.1 and it was party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electrials Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party No.1 that the workman was never appointed by party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workmakan were terminated by the contractor and as such, there was no question of party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the party No.1 and the workman and the party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the relief sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as resjudicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the party No.1 that the party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by party No.1 as per the Rules of apointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial

nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party No.1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.3.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initialy engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No.1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> "2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
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> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor, "Principal employer" has been defined to mean (i) in relation to any

office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain condiions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a respresentative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central Government or the state Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of

the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165= (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words there was no relationship of employer and employee between the Indian Oil Corporation Ltd., and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogehter, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was not privity of contract of employer and workmen between the corporation and the workman. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a persons being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee

or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs*. State of Saurashtra (1957-I-LLJ-477)., Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workmen of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prihibition notification under S. 10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): C.O. No. 6545 (W) if 1996, D/ -9-5-1997 (Cal): W.A. Nos. 345-354 of 1997m D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/-2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the conctractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrepective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither

contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Sectiuon 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the froms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for non-production of documents as ordered by Tribunal on the application of workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in FCI and due his such engagement, it was quite natural for the party no.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by party no. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts,on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the party no.1 or the constractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention can not be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the party no. 1 in his cross-examination that contract for supply of security guards was given by party no.1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No.1.

Moreover, for the sake of argument, even if, it is held that the party no.1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Lobour (Regulation and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Lobour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of security Guards was genunie and the same was not only on papers as claimed by the workman. The Workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Section 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunicated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2066.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 264/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/176/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2066.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 264/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Indistrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/176/2003-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/264/2003 Date: 02.04.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai - 400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar,
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.).

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Sheetal Prasad Kamal Prasad Dwivedi, for adjudication, as per letter No. L-22012/176/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Sheetal Prasad Kamal Prasad Dwivedi, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sheetal Prasad Kamal Prasad Dwivedi ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.08.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his

legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.08.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has to right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendence of the the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman is support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross examination, this witness has admitted that the workman was appointed on 01.08.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/S Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/S Security services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/S Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 01.08.1993 till14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/S Industrial security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchement compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the party no. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representive that neither the party no. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the

workman worked till 14.03.1999 clearly show that the workman was the employee of the party no. 1 and the party no. 1 is the real employer and there was master and servant relationship between the party no. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and thought party no. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party no. 1 till 14.03.1999 and the party no. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of party no. 1 and it though party no. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party no. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of party no. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submission, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs*. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs*. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that party no. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party no. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the

same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor for a period of a 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously with any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods

or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relaion to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf, and (ii) in a factory, the owner or occupier of the facotry. In view of Section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixtation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any emenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punsihment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to duduct the same from the bill of the contractor. The Act also conceives that all appropriate Government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Artile 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation

and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Associtation V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd. to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer, and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate Government, under Section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is ture that with passage of time and purely with a view to safeguard that interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ- 4 (supra) the Hon'ble Apex Court have held that:—

"'Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....''.'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relatioinship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship or command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other

words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more before the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10 (1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10 (1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Call): C.O. No. 6545(W) if 1996, D/- 9-5-1997 (Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/- 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/- 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the difinition of the terms "Contract Labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is ture that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is ture of a workman could not be correct of contract labour. When the provisions of the Act neither

contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10 (1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the party No. 1 to direct him to perfrom different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the party no. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the party No. 1 in his cross-examination that contract for supply of security guards was given by party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enuncated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 2 सितम्बर, 2013

का॰आ॰ 2067.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 265/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/177/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 2nd September, 2013

S.O. 2067.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 265/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 02/09/2013.

[No. L-22012/177/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/265/2003 Date: 02.04.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgate,
Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar,
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 2nd April, 2013)

In exercise of the Powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Devidas Mohan Ramteke, for adjudication, as per letter No. L-22012/177/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Devidas Mohan Ramteke, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Devidas Mohan Ramteke ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.08.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was regular employee of Party No. 1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate

claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.08.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home Guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police Personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abortion) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 01.08.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s. Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to May, 1992, to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 01.08.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s. Industrial Security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned officers of F.C.I. were issuing necessary directions tom the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one months' notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were enaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he never a contract labour and such action of the party No. 1 was sham and only a comouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, form which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I- CLR-254 (Stateman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even through there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement

the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from o1.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decision reported in 1994 II CLR-420 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs*. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs*. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and the he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to and end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for there reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Contitution of India and it has a set Rules for appointment of its employees and it is clear that workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as scuh, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs*. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs*. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs*. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs*. Md. Raffi) and Appeal (Civil) 2669/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs*. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble Court on 29.07.2002 in the said writ petition, it is found that the workman and others dclaimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgement of the Constitution Bench in Steel Authority of India Ltd. and others

Vs. National Union water frond workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

** ** ** **

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the approrpriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata, So, there is no force in the contention raised by the learned adocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that. "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No . 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principlal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local

authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notificaiton in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, whcih is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other esstntial amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such emenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect that interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operaton or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, allthough no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *Vs*. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs*. Union of India, 1985 I CLR SC 165 = (1985) I SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs*. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath Vs. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and pursely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the sourse of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employement of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such case, the labourers are initially employed and engaged by the conbtractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". "The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there shouild be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no quesiton of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs*. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work

which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10 (1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1740 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545 (W) if 1996, D/ - 9-5-1997 (Cal): W.A. Nos. 345-354 of 1997 m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10 (1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the party no. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the party no. 1 in his cross-examination that contract for supply of security guards was given by party no. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engagd the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2068.—औद्योगिक विवाद अधिनियम, 1947 (1947 कर 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 668/2004) को

प्रकाशित करती है, जो केन्द्रीय सरकार के 22/5/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/283/98-आईआर (बी-II)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4th September, 2013

S.O. 2068.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGITA No. 668/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank, and their workmen, which was received by the Central Government on 22.05.2013.

[No. L-12012/283/98-IR(B-II)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present .....
Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 22nd April, 2013

Reference: CGIT A No. 668/2004

Reference: (ITC) No. 14/1999 (Old)

The Managing Director,
Indian Bank,
31, Rajaji, Post Box No. 1384,
Chennai-600001. .....First Party

And

Their workmen,
Shri Jaysinhbhai S. Padhiar,
Near Ranchod Bhawan Wadi,
Rabawadi,
Fatehganj,
Vadodara-390002. .....Second Party

For the First party: Shri K.V. Gadia, Advocate

For the Second party: Shri Jogen Pandya, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi, by its order no. L-12012/283/98/IR(B-II) dated 13/05/1999 in exercise of power conferred by the Clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Dispute Act,1947 referred the dispute existing between the employer in relation to the management of Indian Bank and their workmen, for adjudication by the Tribunal under the terms of reference in the schedule as follows:—

SCHEDULE

"Whether the workman has completed 240 days of continuous service as required under section 25-B of the Industrial Dispute Act, 1947"

"Whether the action of the management of Indian Bank, Fatehganj Branch, Vadodara through its officers in terminating/discontinuing the services of workman Shri Jaysighbhai Somabhai Padhiar in the month of November, 1997 is legal, proper and justified? If not, what relief the concerned worman is entitle and from which date?"

"Whether the demand of the workman for the reinstatement in the bank's service with full back wages and continuity including fringe benefits at par with the regular and permanent employee (sub staff category) is proper and justified? If so, to what relief the concerned workman is entitled to and what other direction are necessary in the matter."

(2) Consequent upon notice to the parties, the 2nd party (workman) submitted his statement of claim (Ext.-3). His case is that he was working as "Badli"/Substitute staff as peon in group D class since 1981 and was discharging his duty sincerely, honestly and with devotion. There was no adverse report against him. In spite of that, the Bank Manager, Fatehganj Branch, Vadodara terminated his services by oral order in the month of November, 1997. Further case is that many person junior to him were absorbed as regular class D Group workers where as his case was not considered and more so he was senior to them. He requested to the bank authority to absorb him as a regular employee of the Bank but the bank did not pay any heed. The 1st party failed to comply with the provision of section 25(F) of Industrial Disputes Act, 1947. Whereas he (2nd party) has completed more than 240 days of working in calendar year and 1st party had adopted unfair labour practice, he was being paid on vouchers and was not allowed to sign on muster roll. Even though the 2nd party all along completed 240 working days even then, he was not given retrenchment notice or compensation as required. The first party has illegally terminated his service. Prayer is for reinstatement in the services of the 1st party with full back wages and other fringe benefits and also for cost of litigation.

(3) The 1st party (management of Bank) also appeared and submitted written statement (Ext.-9) pleading interalia that the reference is not maintainable since there is no any industrial dispute between the Bank and the 2nd party Jaysinghbhai Somabhai Padhiar as contemplated under section 2(K) of the Industrial Disputes Act, 1947. The 1st party denied the allegation made in the statement

of claim. The case of 1st party is that the 2nd party Jaysinghbhai Somabhai Padhiar had been given work purely on casual basis for a particular work but he was not working as a sub staff, he was not given/performing the work of regular class D staff, the 2nd party never completed 240 days of work in any calendar year. He was not given the work by the bank other than casual works basis, he was engaged for particular work which concluded by the end of the day. He was engaged intermittently during exigencies. In this way, the 2nd party had worked only for 227 days during the period from January, 1981 to October, 1997 as per chart showing working period at Annexure-A. It has been denied that the bank manager, Fatehganj, Vadodara terminated the service of the 2nd party by any oral order. There was no need for further casual work and so 2nd party was not provided any casual work after Oct., 1997. The first party has not violated provision of section 25(F) of Industrial Disputes Act, 1947. On these grounds prayer is made to dismiss to reference.

(4) In view of the pleadings of party following issues are taken for the determination in the case.

ISSUES

(i) Whether the reference is maintainable?

(ii) Has the second party valid cause of action in this case?

(iii) Whether the 2nd party completed 240 days of working in the calendar year preceding his oral termination in the month of November, 1997?

(iv) Whether the action of the management of Indian Bank, Fatehganj Branch through its officer in discontinuing the services of workman Shri Jaysinghbhai Somabhai Padhiar is legal, proper and justified?

(v) Whether the 2nd party is entitle for reinstatement in the Bank's services with back wages. Whether alternatively the 2nd party workman is entitled for compensation, if any, in this case?

(vi) What orders are to be passed?

(5) **Issue No. III**

Both parties have adduced oral and documentary evidence in this case (The 2nd party) examined himself at Ext. 55 in support of his stand taken in statement of claim. He was cross-exmined by the 1st party lawyer. On the other hand the Bank (1st party) examined Manubhai Gagandas Aitsinghani working as manager in Indian Bank, Vadodara for supporting the stand taken in written statement. The 1st party filed documents through list Ext. 12& Ext. 23 on 30.07.2000 and 27.01.2003. Documents with list (Ext. 23) were given pakka Ext. 65, 66, 67 and 68 to 68/10 (series) (vouchers). Ext. 65 is the letter of 1st party bank dated 23-03-1992 addressed to Regional Manager, Indian Bank, Ahmedabad, mentioning details of work of the 2nd party, J. S. Padhiar, the temporary sub staff of Fatehganj branch of the Bank. From Ext. 65 it go to show that from January, 81 to August, 91, the total working days of the 2nd party was 95 days. The said working days of the 2nd party also finds support from his application dated 11-11-1992 submitted before the Bank for empanelling him in temporary service in the Bank vide Ext. 67.

(6) 2nd party application Ext. 67 is regarding particular of the temporary service in the Bank from January, 1981 to August, 1991. Ext. 66 is the circular of the Indian Bank dated 12-10-1992 on the subject—empanelment of person engaged in the leave vacancies of sub staff who worked for 90 days or more during the period 01-01-1982 to 31-12-1989. But as particularly Ext. 65, the 2nd party had not completed minimum of 90 days of work from 01-01-1982 to 31-12-1989, rather he had worked for 12 days in July, 1982, 7 days in August, 1982, 6 days in September, 1982, there after he did not work from 1983 to 1988. In the year 1989, he worked for 3 days in March, 1989. Thus, his period of work from July 1982 to 1989 was only 29 days. So 2nd party workman was not fulfilling the criteria as circular of Indian Bank Ext. 66 and he never completed minimum of 90 days from January, 1982 to December, 1989. In filing application for his empanelment vide Ext.-67 he mentioned the period of work from January, 1981 to August, 1991 was 95 days of work, whereas it was meant for showing the work from January, 1982 to December, 1989. Since 2nd party was not fulfilling the criteria of minimum of 90 days of work up to December, 1989 as per circular Ext. 66, so he was not eligible for empanelment. Ext 68 series are 11 vouchers regarding payments made to the (2nd party) in the year 1990.

(7) More so, the first party (Indian Bank) as produced the documents/vouchers with a list Ext. 25 which ware given pakka Ext. 28 to 54. From Annexure-A attached with W.S. (Ext. 9), it is established that the 2nd party has worked only for 227 days during his entire tenure of works January, 1981 to October, 1997. Ext. 67 itself establishes that he (2nd party) worked less than 240 days during January, 1981 to August, 1991. Ext. 67 also reflects that the date of birth of the 2nd party is 13-09-1956 and at present he has already completed 55 years of age. Vide Ext. 21 the 2nd party demanded certain documents and the 1st party replying by Ext. 24 and the Labour Court had passed order below Ext. 21 directing the Bank to produce the demanded documents. In response to order below Ext. 21, the first party produced documents which were available and same were mark Ext. 28 to 54 and for rest of the documents demanded were not available in the Bank as not to be retained more than 8 year old documents for which an affidavit of Branch Manager was filed vide Ext. 26.

(8) Now coming to the oral evidence of 2nd and also of the 1st party. The workman (2nd party) deposed vide Ext. 55 that he joined the Bank on 01-01-1981 as a peon and he has been orally terminated in November-1997 and at the time of alleged termination he was not given notice, notice pay or retrenchment compensation. During the cross-examination he admitted that he was being paid wages on daily basis. He also admitted that he does not know what is stated in the statement of claims? He also admitted that he has not stated in the statement of claim that how many days he had worked in the Bank? He also admitted that he has no proof that he had work in Alkapuri Branch. He also admitted that for appointment for peon names were called from employment exchange. The 1st party witness Manubhai vide Ext. 62 has stated in the examination in chief that the 2nd party was provided work as and when exigency arose, the 2nd party has not worked 240 days, in a year, his engagement was on need basis and daily wages basis, the 2nd party was not appointed as per the recruitment rules, the 2nd party has worked 95 days from 1981 to 1991 and 132 days from 1993 to 1997. The Bank witness was cross-examined at length but nothing could have been gained by the 2nd party to discredit his testimony. The 2nd party has failed to rebut the evidence of the management witness.

(9) From examining oral and documentary evidence discussed above, it is crystal clear that the 2nd party has not completed 240 days in any year of service during the span of his work from January-1981 to October-1997. As per the documents produced by the 1st party, the 2nd party worked in total 227 days in his along tenure of 17 years from 1981 to 1997 and that he was a casual worker and never appointed as per rules and regulations of the Bank. Thus, this issue is decided against the 2nd party.

(10) **Issue No.-IV:—**In view of the findings to Issue No-III in the forgoings since the 2nd party never completed 240 days to work in any calendar year and more so more particularly in the calendar year preceding oral termination in November-1997, it was not incumbent upon the 1st party (Bank) to comply with the provision of section 25(F) Industrial Dispute Act, 1947. More so, the work performed by the 2nd party was casual in nature in the case of exigency and also was working intermittently and so the 2nd party has not acquired any status of such workman completed 240 days of work in calendar year. So the 1st party was not required to give notice or notice pay. Thus the action of the management of the Indian Bank, Fatehganj branch though its officer in discontinuing the service of the workman Shri Jaysinghbhai Somabhai Padhiar is legal and proper and justified. This issue is decided accordingly in favour of the 1st party.

(11) **Issue No. V:—**As per findings arrived of at in the foregoing paras to Issue No III and IV, I am of the considered view that the 2nd party is not entitle for reinstatement and back wages. The 2nd party is also not found entitle for any compensation from the Bank instead of reinstatement as he had no completed 240 days of works as per findings to Issue No_III. This issue is also decided against the 2nd party.

(12) **Issue No. I, II & VI:—**In view of findings to Issue No.-III, IV, V in the foregoing paras, I further find and hold that the reference is not maintainable and the 2nd party has no cause of action to raise this Industrial Dispute. Therefore, the reference is dismissed on contest. No. order as to any cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2013

का॰आ॰ 2069.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 157 वर्ष 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-09-2013 को प्राप्त हुआ था।

[सं॰ एल-20012/51/2001-आईआर (सी एम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 3rd September, 2013

S.O. 2069.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 157/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhandbad as shown in the Annexure, in the industrial dispute between the management of Kustore Area of M/s. BCCL and their workmen, received by the Central Government on 03-09-2013.

[No. L-20012/51/2001-IR(CM-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

REFERENCE NO. 157 OF 2001.

PARTIES: General Secretary,
Coal Mines Workers Engineers Workers Organisation, Bekar Bandh, Dhanbad.

Vs.

General, Manager, Kustore Area of M/s BCCL, Dhanbad

On behalf of : the workman None

On behalf of the : Management Mr. D.K. Verma, Ld. Advocate

State : JHARKHAND Industry : Coal

Dated, Dhanbad, the 1st Aug., 2013.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on then under Sec. 10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/51/2001 (C-I) dt. 22.5.2001

SCHEDULE

"Whether the action of the management of BCCL, Kusote Area in reducing the rank of Shri Kanhai Bhar to Cat. III and also in reducing his wages from Rs. 39.04 to Rs. 31.80 is just, fair and legal? If not to what relief is the workman concerned entitled?

2. Neither Union Representative nor workmen Kanhai Bhar appeared for hearing substitution petition of the petitioner concerned despite ample opportunity for hearing over the substitution petition pending for it since 3.5.2001, Mr. D.K. Verma, the Ld. Advocate for the O.P./Management is present.

The perusal of the record reveals that the case has been pending for hearing on the substitution petition of the petitioner concerned since 3.5.2011, but neither the Union Representative nor the petitioner concerned appeared to press it. The conducts of the Union representative and the petitioner concerned, namely, Panchanand Bhar show that they are not willing to proceed with the case which is related to a issue over the reduction of the rank of the workman Kanhai Bhar to Cat.III and of his wages from Rs. 39.04 to Rs. 31.80.

In the aforesaid circumstances, it is useless to proceed with the case for uncertainty. Hence it is closed as non existence of the Industrial Dispute. Accordingly, it is passed an order/Award of No Dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2013

का॰आ॰ 2070.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 26/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.09.2013 को प्राप्त हुआ था।

[सं॰ एल-20012/17/2007-आई आर (सी एम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 3rd September, 2013

S.O. 2070.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. ECL, and their workmen, received by the Central Government on 3.09.2013.

[No. L-20012/17/2007 - IR(CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 26 OF 2007.

Parties : The Secretary,

Bihar Pradesh Colliery Mazdoor Congress, Bishunpur, Dhanbad

Vs.

General Manager, Mugma Area of M/s. BCCL, Dhanbad

On behalf of : the workman None

On behalf of the : Management Mr. D.K. Verma, Ld. Advocate

State : JHARKHAND Industry : Coal

Dated, Dhanbad, the 1st Aug., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/17/2007-IR(CM-I) dt. 03.05.2007.

SCHEDULE

"Whether the action of the management of Hriajam Colliery of M/s. ECL in not referring Smt. Kalo Manijhian, Loading Coolie to the Apex Medical Board for assessment of her correct age is justified and legal? If not, to what relief is the concerned workman entitled.

2. Mr. U.P. Sinha, the learned Advocate for the Union/the workman is present, but the workwoman Smt. Kalo Manjhian, Loading Coolie is not present, nor any witness produced for the evidence of the wokman Mr. D.K. Verma, the Learned Counsel for the O.P./Management is present. Mr. Sinha, the Learned Advocate for the Union submits that the workwoman is not interested in pursuing her case though he tried his best to contact her several times. The record of the proceeding discloses its pendency for the evidence of the workwoman since. 8.3.2013. The conduct of the workwoman primefacie indicates that she is not interested in proceeding with her case which is related to an issue over not referring her to the Apex Medical Board for the assessment of her correct age.

In result, the case is closed as no industrials dispute existent; accordingly it is passed an order/award of No Dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2013

का॰आ॰ 2071.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 69/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.09.2013 को प्राप्त हुआ था।

[सं॰ एल-20012/184/1998-आई आर (सीएम-II)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 3rd September, 2013

S.O. 2071.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 03.09.2013.

[No. L-20012/184/1998- IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT

Shri KISHORI RAM, Presiding Officer.

In the matter of an Industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 69 OF 1999.

Parties : Bihar Janta Khan Mazdoor Sangh, Dhanbad,

Vs. G.M., Katras Area of M/s BCCL, Dhanbad.

Appearances :

On behalf of the workman : None

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : JHARKHAND Industry : Banking

Dated, Dhanbad, the 29th July, 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-12012/184/1998-IR(C-I) dt. 27.01.1999.

SCHEDULE

"Whether the action of the management of Angarpathra Colliery of M/s BCCL in not referring Sh. Ch. Fagu Bhuiyan M/Loader to Apex Medical Board as per I.I. No.76 of JBCCI for determination of his correct date of birth, when two different date of births were found recorded in service excerpts of the concerned workman in spite of representation made by him to the management is justified? If not, to what relief is the said workman entitled?."

2. Neither Union Representative for Bihar Janta Khan Mazdoor Sangh, Dhanbad, nor workman Sh. Ch. Fagu Bhuiyan appeared. But Mr. D.K. Verma, Ld. Advocate for the O.P./Management is present. No witness of the management is present.

Perused the case record, I find that despite more than ample opportunities, not a single witness could be produced for the evidence of the workman during the long period of it since 3.12.2003 and at last at the declination of Mr. T.P. Jha, the Ld. Adv. for the workman/Union to adduce the evidence on his behalf, the case of the workman was already closed as per Order no. 24 dt. 13.3.06 of the Tribunal. In the present reference, which relates to an issue about not referring the workman, M/Loader to Apex medical Board for determination of his correct date of birth. It is cardinal pinciple of the rule of law that the petitioner has firstly to lead his evidence in support of his case. But in the present reference, neither the Union representative nor the workman could produce any witness for his claim. Under these circumstances, there is no point for adducing any evidence on behalf of the management, because the petitioner himself has not discharged the onus of his proof.

In result, the case is closed as non-existent of Industrial Dispute; accordingly it is passed an order of No. I.D.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2013

का॰आ॰ 2072.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 42/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.09.2013 को प्राप्त हुआ था।

[सं॰ एल-20012/754/1997- आई आर (सीएम-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 3rd September, 2013

S.O. 2072.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 3.09.2013.

[No. L-20012/754/1997- IR(CM-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT

Shri KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 42 OF 1999.

Parties : Addl. General Secretary, The National Coal Workers. Congress, Hirapur, Dhanbad *Vs.* General Manager, Sijua Area of M/s BCCL, Dhanbad

Appearances :

On behalf of the workman/ Union : Mr. B.B. Pandey, Ld. Advocate.

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : JHARKHAND Industry : Coal

Dated, Dhanbad, the 30th July, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/754/97-IR(C-I) dt. 18.1.1999.

SCHEDULE

"Whether the action of the management of Kankanee Colliery of M/s. BCCL in dismissing Sh. Ishwar Das, M/Loader, *w.e.f.* 30.10.92 from the services of the Company is legal and justified? If not, to what relief the workman concerned is entitled.

2. The case of workman Ishwar Das as sponsored by the National Coal Workers Congress, Hirapur, Dhanbad, is that the workman was a permanent employee of Kankanee Colliery, Sijua Area of M/s. BCCL. He served the Colliery for a long time. But he suddenly began to suffer from Rhuematism and Arthritis of affecting numbness in right side of his body, particularly in right leg with severe pain in the body. Due to sudden eruption of peculiar disease, he used to absent off and on at three or four occasions during 1990 and 1991. He remained absent continuously for about a month upto 15.3.1992 in the year and alleged to absent after August, 1992 to 15.3.1992 as stated irregularly under the compelling circumstances of the disease. After his recovery, when he turned up with Medical Certificate of fitness before the management, he was disallowed to resume duty, though it was assured to do so in due course, and accordingly, he persuaded and requested the management to let him join his duty, but to great surprise, he got the letter of dismissal from the management, communicating it *w.e.f.* 30.12.1992 whereas prior to it, neither any chargesheet,

letter of explanation nor any notice regarding his aforesaid circumstantial absence was served on him. The management dismissed him violative to the rules of the Disciplinary proceeding and of principles of natural justice. His dismissal is ab initio void and illegal, as it was without departmental enquiry, supply of proper documents, and second Show Cause. The action of the Management in his dismissal is illegal and unjustified.

3. The Union in its rejoinder has specifically denied all the allegations of the O.P./Management, and stated that in lack of notice of the enquiry, the workman was not aware of the enquiry ex parte, even thereafter, no copies of the findings/report of the Enquiry Officer were supplied so as to submit his show cause before the dismissal.

4. Whereas with categorical denials, the contra pleaded case of the O.P./Management is that the workman was a habitual absentee, as several charge-sheets were issued to him since 1988 and accordingly he was several times warned of his such misconducts, and once suspended for five days by taking the actions of the management as noted in Para 4 of its written statement. In spite of it, the workman again absented from his duty *w.e.f.* 16.3.1992 without any information and permission/approval of the Competent Authority. He was charge-sheeted on 28.8.1992 for his misconduct under clause 26.1.3 of the Certified Standing Order of the Company, but he did not submit his reply to it. Hence, the departmental Enquiry was fairly conducted ex-parte by the Enquiry Officer, as the workman had neither appeared nor responded to the Notices of the Enquiry even at its publication in Daily News Paper—Awaz dt. 21.9.92. The charges levelled against workman were proved. The Disciplinary Authority dismissed the workman *w.e.f* 30.12.1992. The dismissal of the workman is legal and justified. The Management also proposed the fairness of the domestic enquiry to be decided as a preliminary issue, and in case of its unfairness, for permission to prove the charges by adducing afresh evidence.

5. The O.P./Management in its rejoinder specifically denied the allegations of the workman, and stated that the workman never reported of his illness to the Medical Officer of the Company. Though the management gave him ample opportunity, he never informed the management of his absence. He did not explain what prejudice caused to him.

FINDING WITH REASONS

6. In the reference, since Mr. B.B. Pandey, the learned Counsel for the Union/workman as per his petition dt. 2.4.2013 has accepted the fairness of the domestic enquiry, and accordingly the Tribunal has also held it quite fair, proper and in according with the principle, of natural justice. The case directly came up for hearing argument on merits.

Mr. Pandey, the Ld. Counsel for the Union submits that the workman has suffered for twenty years, so he be reinstated in his service without back wages. On the other hand, Mr. D.K. Verma, the Learned Counsel for the O.P./ Management has to contend that though the workman is a habitual absentee yet it may be considered.

7. After going through all the materials of the O.P./ Management the Chargesheet dt. 28.8.92, the Enquiry Proceeding (18 sheets), the previous Enquiry Report with its present one dt. 28.8.92 and the Agents's Order dt. 30.10.92 for dismissal of the workman Ishwar Das (Ex. M1 to 4 respectively), I find the facts as under:

(i) The instant enquiry against the workman relates only to his present unauthorized absence for the period from 16th March, 1992 up to date (28th August, 1992, the Enquiry Report was submitted), but it does not incorporate his previous such misconducts; and

(ii) The O.P./Management has no proof of the second Show Cause having been issued to the workman prior to his dimissal from his service. It does not stand to the test of legality, being violative of the principles of natural justice even in the present ex-parte enquiry.

In view of the aforesaid circumstances, it is evident that the dismissal of the present workman from his service as his punishment for his misconduct of the unauthorized absentism appears to be highly disproportionate to the nature of his absentism. So it needs its annulment, as it was quite legally invalid. The workman deserves his due relief under Sec. 11A of the Industrial Dispute Act, 1947.

In result, it is hereby.

ORDERED

That the Award is and the same be passed that the action of the Management of Kankanee Colliery of M/s BCCLO in dismissing Shri Ishwar Das M/Loader *w.e.f.,* 30.10.92 from the services of the Company is quite illegal and unjustified. So, he is entitled to his reinstatement in his service without back wages. Let the copies—one soft and one hard—of the Award be sent to the Ministry of Labour & Employment, Government of India, New Delhi for information and needful publication in the Gazette of the India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2073.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इन्शोरेन्श कम्पनी लि॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 66/98 को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/09/2013 को प्राप्त हुआ था।

[सं॰ एल-17012/10/97-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4th September, 2013

S.O. 2073.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/98) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of National Insurance Co. Ltd. and their workmen, received by the Central Government on 04/09/2013.

[No. L-17012/10/97-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/66/98

PRESIDING OFFICER: SHRI R.B. PATLE

Smt. Muneer Bee,
W/o Shri Babu Bhai,
R/o Dongrighat Para,
Jagdalpur,
Distt. Bastar .....Workman

Versus

Asstt. Branch Manager,
National Insurance Co. Ltd.,
Near Central Bank,
Jagdalpur,
Distt. Bastar .....Management

AWARD

Passed on this 29th day of July 2013

As per letter dated 31-3-1998 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. 17012/10/97-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of National Insurance Co. Ltd. Jagdalpur Branch, Jagdalpur in terminating the services of Smt. Muneer Bee *w.e.f.* 2-4-96 is legal and justified? If not, to what relief the said workman is entitled?"

2. Ist party workman is challenging her termination w.e.f. 2-4-96 from management in the dispute under reference. Even after issuing notices, the Union did not participate in the proceeding, no statement of claim is filed. Ist party is proceeded exparte on 16-7-2007.

3. IInd party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:—

"Reference is disposed off as No Dispute Award."

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2074.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 45/2005 को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-41012/114/2001-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th September, 2013

S.O. 2074.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 05/09/2013.

[No. L-41012/114/2001-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/45/2005

PRESIDING OFFICER: SHRI R.B. PATLE
Shri Ganesh Prasad Pandey,
Vill. Nandana Post, Jaitwara,
Distt. Satna (MP) .....Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur .....Management

AWARD

Passed on this 24th day of July, 2013

1. As per letter dated 22-6-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-41012/114/2001-IR (B-I). The dispute under reference relates to:

> "Whether the action of the management of Central Railway, Jabalpur in not regularizing the services of Shri Ganesh Prasad Pandey is justified? If not, what relief the concerned applicant is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party filed statement of claim at Page 5/1 to 5/2. The case of Ist party is that he was working as casual labour in Railway department. That during the period 23-12-80 to 19-8-88, he worked as casual labour holding Card No. 179242. Its details were submitted to the concerned officers. His services were discontinued by IInd party from 9-10-95. That he was repeatedly submitting applications for regularization of his services. In 1981, Railway Board had decided that casual employees working after 1981 would be regularized by amendment. Ist party submits that during the period 23-12-1980 to 15-3-81, he was working under PWI Signal, Central Railway, Katni. During period 24-4-81 to 16-5-81, he was working under Inspector Construction, Central Railway Satna during 19-4-88 to 18-9-88, he was working under Railway Electrification Project, Itarsi. During period 23-12-80 to 16-5-81, he was paid Rs. 150/- per month. During 19-4-88 to 18-9-88, he was paid Rs. 500/- per month.

3. The workman further submits that Central Railways, Head Office at Mumbai had displayed list of casual labours on 28-1-03. That he had repeatedly requested the Railway authorities for regularizing his services but without results. He had filed Writ Petition No. 967/2004 before Hon'ble High Court and ultimately the reference is made. The Ist party workman prays for regularization of his service, protection of his seniority and benefit and allowances.

4. IInd party filed Written Statement at denying the relief prayed by workman. According to IInd party, the workman was not continuously working. Ist party was working as casual labour during the period 23-12-82 to 19-8-98. His name was not included in the list of casual labours as he did not work for 120 or 180 days in an year. That as per Railway Regulations Chapter-20 Para-2001 Sub Rule kh Sub clause (2), the casual employees working for 120 or 180 days continuously are deemed regular. That workman was not fulfilling those conditions so far as the working of Ist party workman during the period 19-4-88 to 18-9-88 at Itarsi, the Railway Electrification project, Head Office is at Allahabad. Railway is not joined as party. It is denied that services of Ist party were terminated from 1-10-95. In order of termination was not issued by the IInd party. That casual employees are engaged as exigencies and needs. All other contentions of Ist party are denied. It is denied that workman is entitled to regularization or any of the relief prayed by him. In special pleading earlier contentions are reiterated that the workman has not completed 120 or 180 days service required as per Railway Regulations Chapter-20 Para-2001 Sub Rule kh Sub clause (2).

5. Considering pleading on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Central Railway, Jabalpur in not regularizing the services of Shri Ganesh Prasad Pandey is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

6. Ist party workman is praying for regularization of his services claiming that he was working as casual employee during the period 1980 to 1988 given in detail in above paras. IInd party denies that the Ist party was working continuously. It is submitted that Ist party had not completed 120/180 days continuous working. Therefore he is not entitled to benefit of regularization as per Railway Regulations Chapter-20 Para-2001 Sub Rule Kh Sub clause (2). Workman filed affidavit of his evidence covering most of his contentions about working as casual labour from 23-12-80 to 23-8-88. He has produced Labour Card. That he had repeatedly approached the authorities for regularization of his services but his request did not materialize. In para-10 of his affidavit, he has stated that he has continuously worked for 180 days, his services are illegally terminated without paying retrenchment compensation. Said part of evidence is beyond term of reference. The legality of termination of workman is not referred by the Central Govt.

7. The workman in his re-examination says that he received service card from Katni, he had signed on it, he also put his thumb mark on it, the entries of working day were taken on record. And marked as Exhibit W-1. He has also produced certificate Exhibit W-2. The working days of workman are not shown but the period of working is shown 23-12-80 to 18-3-81, 21-4-81 to 16-5-81, working days are 152. In Casual Labour Card Exhibit W-2, the entries of working days are found for the month of May to September 1988 as 147 days.

8. The evidence of management's witness Nilesh Kumar is on the point that the workman had not worked continuously worked for 120 days during 1980-81, 88 as per said witness Ist party workman has worked for 83+19 days in 1981 and 150 days in 1988 but he was not continuously working for 7 years i.e. from 1981 to 1988. In his cross-examination, management's witness says that Ist party workman was working on casual labour card issued to him while work at other place, fresh card used to be issued. The witness claimed ignorance about issue of fresh card, the documents are not available. Managements witness admits that workman had worked in Railway Jabalpur as casual labour, he has also worked at Satna, Itarsi. The copy of the Government Circular dated 28-2-2001 relating to absorption of Railway in ex-casual Railway is produced as Exhibit W-2. Para-2 of the said circular provides for the benefit of regularization absorption of casual labour is subject to upper age limit of 40 years in case of general candidates and 45 years in case of SC/ST candidates not being exceeded may also be granted case of casual labour substitutes for recruitment against Group C & D posts. The OBC candidates will also get age relaxation upto the upper age limit of 43 years as has been granted to the serving OBC Railway employees vide Board's letter dated 1/6/99. The dispute is referred by Central Govt. on 26-6-05. In his affidavit of evidence, the workman has shown his age as 50 years in 2012. Thus at the time of reference, age of Ist party workman must be above 40 years. Therefore he is not entitled to the benefit of regularization/absorption as per said circular of the Government. Besides above, parties have not produced any circular that on completion of 120/180 days, the casual employees are entitled for regularization. The workman has stated that list of casual employees were displayed at Central Railway Office, Mumbai. Copy of said list is not produced on record.

9. Learned counsel for Ist party Mr. Dharmesh Chaturvedi relies on ratio held in case of

> "State Bank of India versus Central Govt. Industrial Tribunal-cum-Labour Court and another reported in 2013(3) M.P.H.T. 190. His Lordship considering facts dealing with Section 25-F and 25-B of I.D. Act held The petitioner Bank terminated the service of respondent No. 2, a casual worker orally on 31-1-85. He had been rendering service *w.e.f.* 24-12-83 The Bank contented that the respondent No. 2 was paid wages only on working days and no wages for Sundays and other holidays. So counted, respondent No. 2 had worked for only 217 days before his termination. Held Sundays and other holidays by contract or statute must be treated as days on which the employees actually worked under the employer-So calculated, respondent No. 2 had worked for more than 240 days and therefore, his discontinuance from employment amounted to retrenchment and nothing else."

In present case, the legality of termination of service of workman is not referred therefore the ratio cannot be applied to present case. Workman is claiming regularization.

10. Learned counsel for IInd party Mr. Sonane relies on ratio held in AIR-2000-SC-2230, 2013-3-MPLJ-144 & IR-2004-4681. The ratio in all those cases cannot be applied to present case as the termination of services of Ist party is not a term of reference.

11. Considering evidence on record and the circular issued by Government, the Ist party workman is not entitled for regularization. He is admittedly not in employment from 1988. The reference is made in 2005 after long lapse of time. The Government circular was issued in 2001. The circular do not have retrospective effect. For above reasons, I record my finding in Point No. 1 in Affirmative. In view of my finding in Point No. 1, the workman is not entitled to regularization. Accordingly Point No. 2 is answered.

12. In the result, award is passed as under:—

(1) The action of the management of Central Railway, Jabalpur in not regularizing the services of Shri Ganesh Prasad Pandy is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2075.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 266/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/09/20013 को प्राप्त हुआ था।

[सं॰ एल 22012/178/2003-आई आर (सी-एम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 4th September, 2013

S.O. 2075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 266/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 04/09/2013.

[No. L-22012/178/2003-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/266/2003 Date: 02.04.2013

Party No. 1 (a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1 (b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 02nd April, 2013)

In exercise of the powers conferred by clause (d) of sub section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Aziz Abdul Razak, for adjudication, as per letter No. L-22012/178/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Aziz Abdul Razak, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Aziz Abdul Razak, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.08.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system, in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with the intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.08.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25(H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman has filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he has not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his crosss-examination, this witness has admitted that

the workman was appointed on 01.08.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.3.1993, to M/s. Chaitanya Industrial Security and Investigation Services, Amravati from January, 1992 to May, 1992, to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 01.08.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s. Industrial Security and Fire Services, Bomaby by FCI. This witness has further admitted that the concerned officers of FCI were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a comouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment ot the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs*. Eight Industrial Tribunal, West Bengal & Ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the party no. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs*. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs*. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularization on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

"In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and Others *Vs.* National Union Water Front Workers and Others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

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In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a

contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper". The case of the workman is that after every two years, the party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principle enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs*. M/s. Food Corporation of India) and 2001 Lab IC 3656 (S.C.) (Steel Authority of India Ltd. and other *Vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. the "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2(1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropirate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under an in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it

requires every principal employer to nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognised contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. This Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of the work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be dicided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers conceerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. Howeve, such a clause in the contract which is benevolently inserted in the contract to portect the continuance of the source of livelihood to the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employess of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such

cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the later agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1975 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 19(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
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> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the estabishment under a genuine contract or is a mere ruse/comouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by

relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (CAl): C.O. No. 6545 (W) if 1996, D/ - 9-5-1997 (Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-1999 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of any establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic terms of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal of the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number or documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the party no. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he ws engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the

last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and srvant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the dicussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The refernce is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2076.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 131/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/09/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/125/2002-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4th September, 2013

S.O. 2076.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 04/09/2013.

[No. L-12012/125/2002-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/131/2002

PRESIDING OFFICER: SHRI R. B. PATLE

Shri Anil Kumar Khare,
Gandhi Ward No. 2,
Tila Jamalpura,
Berasia Road,
Bhopal (MP) .....Workman

Versus

The Assistant General Manager,
State Bank of India, Zonal office,
Region-I, Hamidia Road,
Bhopal (MP) ....Management

AWARD

Passed on this 7th day of August, 2013

1. As per letter dated 9-9-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/125/2002-IR(B-I). The dispute under referrence relates to:

> "Whether the action of the management of Asstt. General Manager, State Bank of India in terminating the services of Shri Anil Kumar Khare *w.e.f.* 12.2.2001 is justified? If not, what relief the workman is entitled?"

2. Ist party workman is challenging termination of his services from management in the dispute under reference. Even after issuing notices, the Union did not participate in the proceeding, no statement of claim is filed. Ist party is proceeded exparte on 9-1-2007.

3. IInd party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:—

"Reference is disposed off as No Dispute Award."

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2077.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 330/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/09/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/277/99-आईआर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4th September, 2013

S.O. 2077.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 330/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 04/09/2013.

[No. L-12012/277/99-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/330/99

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Shivshankar Tiwari,
S/o Shri Sutanlal Tiwari,
Mahavir colony,
Old Panna Nakka,
Chhattarpur (MP) .....Workman

Versus

Asstt. General Manager,
State Bank of India,
Divisional office,
Jayendraganj, Gwalior
The Branch Manager,
State Bank of India,
Small Industry Branch,
Chhattarpur (MP) .....Managements

AWARD

Passed on this 31st day of July 2013

(1) As per letter dated 15-11-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/277/99/IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of State Bank of India, Small Industry Branch, Chhattarpur (MP) regarding termination of services of Shri Shivshankar Tiwari S/o Shri Sutanlal, Temporary sub-staff (after working from 1-11-95 to 15-4-97 w.e.f. 16-4-97 is legal and justified? If not, to what relief the workman is entitled to?"

(2) After receiving reference, notices were issued to the parties. !st party workman filed statement of claim at Page 4/1 to 4/4. The case of Ist party workman is that he was employed in IInd party No. 2 as waterman-cum-messenger from 1-11-95. He performed duties with devotion. He was informed that as per rules, he would be paid 1/3rd of regular wages gradually wages would be increased to half. On said assurance, he continued to work in the Bank. Workman was under hope that he will be confirmed in the post. His services would be regularised on 17-10-96. He requested higher officers of the Bank to fix his pay for post of waterman cum messenger. He has also issued reminder dated 3-1-97, 22-3-97. On 16-4-97, his services were orally terminated. IInd party had taken negative action because of his applications. There was no other reasons for terminating his services. When he approached Labour Court, Jabalpur amount of Rs. 4000 was paid towards difference of wages on 29-7-98. On his application to ALC, Jabalpur, the reference is made.

(3) Ist party workman submits that he was working as waterman cum messenger continuously. His services are illegally terminated without complying provisions of Section 25-F of I.D. Act. on such grounds, Ist party workman prays for his reinstatement with back wages.

(4) IInd party filed Written Statement at Page 8/1 to 8/8. It is submitted IInd party that workman was engaged purely temporary part time casual employee. He was required to work only for 45 minutes per day. Workman was paid consolidated wages as part time casual employee for filling drinking water in the morning. Workman was not engaged after 15-04-97. The workman was engaged only for 45 minutes per day. He was free not to come on next day and similarly the management was at liberty not to engage him on the next day. Workman was paid wages Rs. 440 per month. Discontinuation of service of workma is covered under Section 2(oo)(bb) of I.D. Act. That workman had not completed 240 days continuous service preceding discontinuation. Violation of Section 25-F of I.D. Act is denied by the IInd party. It is denied that Ist party workman was working for whole day and he was assured increase of wages 1/3rd, 1/2 etc. IInd party denied that the services of workman are illegally terminated. On such contentions, IInd party prayed for rejection of relief prayed by workman.

(5) Workman filed rejoinder reiterating his contentions that he was continuously working in the Bank and he was assured increase in wages. That his services are illegally terminated violation the provisions of Section 25-F of I.D. Act.

(6) Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of India, Small Industry Branch, Chhatarpur (MP) regarding termination of services of Shri Shivshankar Tiwari S/o Shri Sutanlal, Temporary sub-staff (after working from 1-11-95 to 15-4-97 w.e.f. 16-4-97 is legal?	In Negative
(ii) If not, what relief the workman is entitled to?	As per final order

REASONS

(7) Workman is challenging termination of his services from 16-4-97 on the ground that provisions of Section 25-F of I.D. Act are not complied. That he was continuously working in the Bank from 1-12-95 to 16-4-97. He was working for whole day. He was discontinued from 16-4-97. On his application to ALC, he was paid difference of wages. That he was working on vacant post of waterman/messenger. He was assured to increase of wages. He was hopeful of regularization of his service. In his cross-examination workman denies that he was working as part time employee. That he was engaged on daily wages for filling drinking water, he was distributing letters. He denies that he was doing work of filling water till there was water in the tap. He explained that there was jet machine and only one minute time was required for filling water. Thereafter he has distributed letters going outside. He denied that he was working only for 45 minutes on wages of Rs. 440 per month. He has not received appointment letter. For regular appointment, selection process is required to be followed. He claims ignorance whether Branch Manager has power for regular appointment. He claims ignorance whether his attendance was recorded while he was working in the Bank. The evidence of workman that he was continuously working from 1-11-95 is not shattered. The evidence of management's witness Keshav Kumar Gupta submitted his affidavit. The management's witness has stated that in 1995, Ist party workman was working for 25 days in 1996 for 295 days and in 1997 for 85 days. The workman was engaged purely on casual daily wage basis. He was not appointed against vacant post. That workman has not continuously worked for 240 day. In his cross-examination, management's witness says that he was working at Chhattarpur from February 2009, he had not enaged the workman. While the workman was working in the Bank, the witness was not posted there. Workman was working on contract basis. Management's witness has stated that workman was working from 1995 to 1997 as per the record. Workman was working for 45 days. He was paid @ Rs. 4480 per month. Witness has referred to document Exhibit W:4 and admitted its contents. The management's witness has no personal knowledge, his evidence is produced on record. Relevant document Exhibit W-4 finds that workman was working for 45 minutes per day and he was requesting for increase in his pay. It is clear from Exhibit W-4 that workman was part time employee. The part time employee is also entitled for Section 25-F of I.D. Act, his services cannot be terminated without notice. Document Exhibit W-5 appears copy of peon book maintained in the Bank. The evidence on record establish that workman was working for 240 days preceding his discontinuation from service. Document Exhibit M-4 is copy of settlement dated 30-7-96. Exhibit M-5 is minutes of discussion between the representative of Union and the Bank. The terms of reference doesnot include regularization of services of workman. Terms of reference relates only to legality of termination of service. Therefore those documents are not vital for deciding legality of the termination of service of workman. The evidence of witnesses of management does not point out notice of termination of service was issued to the workman. As such services of workman are teminated without compliance of Section 25-F therefore I record my finding in point No. 1 in Negative.

(8) Point No. 2—Question arises as to what relief workman is entitled? Whether workman is entitled for reinstatement with back wages as claimed by him. The evidence in record shows that workman was working for 45 minutes per day as per exhibit W-4. As such workman was working as a part time employee, his services are terminated in violation of Section 25-F of I.D. Act. The workman was not appointed following selection process. He was not working against sanctioned post. Therefore reinstatement of workman would not be appropriate. Rather compensation of Rs. 25,000 would be appropriate in the circumstances. Accordingly I record my finding on Point No. 2.

(9) In the result, award is passed as under:—

(1) Action of the management of State Bank of India, Small Industry Branch, Chhatarpur (MP) regarding termination of services of Shri Shivshankar Tiwari S/o Shri Sutanlal, Temporary sub-staff (after working from 1-11-95 to 15-4-97 w.e.f. 16-4-97 is illegal.

(2) IInd party management is directed to pay compensation Rs. 25,000/- to the Ist party workman Shri Shivshankar Tiwari.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2078.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 36/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4/09/2013 प्राप्त हुआ था।

[सं॰ एल-12012/242/2002-आईआर(बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4th September, 2013

S.O. 2078.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2003) of the Cent. Govt. Indus. Tribunal, Jabalpur as shown in

the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 04/09/2013.

[No. L-12012/242/2002-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/36/2003

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Mahesh Shinde,
S/o Shri Martand Rao,
Hazari Road,
Mandsour (MP) ....Workman

Versus

The Asstt. General Manager,
State Bank of India, Zonal Office,
Hamidia Road,
Bhopal (MP) .....Management

AWARD

Passed on this 19th day of June, 2013

1. As per letter dated 27-1-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/242/2002-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in not granting appointment to Shri Mahesh Shinde S/o Shri Murthund Shinde even after called for him for interview on 13-2-97 is justified? If not, what relief the workman is entitled to?"

2. After receiving reference, Ist party workman submitted his claim at Page 4/1 to 4/2. The case of Ist party is that he was working as peon at SBI Mandsaur from from 1988 to 1992. He had completed 240 days continuous service. He was performing different works in the Bank.

That he has achieved eligibility for regularization of his services. On 13.2.97, he was called for interview. However the results of interview has not declared. The Branch Manager Mandsaur has issued certificate as his services were not regularized. He had approached Conciliation Officer, Bhopal. The reference is made by Government of India. He is unemployed after discontinuance of his services. Ist party workman prays that he may be reinstated with consequential benefits.

3. Management filed Written Statement. It is submitted that the workman was employed purely on leave vacancy as casual labour for 56 days during the period for 19.4.88 to 23.6.88. That he was engaged as per exigency of work. The wages were paid to him. That the workman was engaged on contract basis from opening hours of Bank and end with closing hours of Bank. His discontinuation does not amount to retrenchment rather it is covered under Section 2 (oo) (bb) of I.D. Act. That workman has not completed 240 days continuous service as required under Section 25B of I.D. Act.

4. That IInd party management has elaborate selection procedure as per agreement entered in Staff Federation of SBI Employees dated 17.11.87, 16.7.88 and 31.7.88. The casual employees are required to be observed who had worked for 60 days after 1975. That the Ist party workman had woked only for 56 days during 1988. He had completed 240 days continuous service. Therefore the workman is not entitled to regularization/reinstatement of his service.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Where the action of the management of Asstt. General Manager, State Bank of India, Bhopal in not granting appointment to Shri Mahesh Shinde even after called for him for interview on 13.2.97 is legal?	In Affirmative
(ii) If so, to what relief the workman is entitled to?	Relief prayed by workman is rejected.

REASONS

6. Ist party workman is claiming that the Bank had not continued him in service inspite on his interview dated 13.2.97. That he had continously worked as peon from 1988 to 1992. He had completed 240 days continuous working during each of the year. Management had denied above contentions of the workman. It is submitted that workman was employed as casual employee or daily wages. He had worked only for 56 days in 1988. Workman failed to adduce evidence. The case was proceeded exparte against him on 28.2.2012. The management has filed affidavit of evidence of witness Gopikishan Sugandhi. The witness of the management has stated on oath that the workman had worked for 60 days during the period 16.4.88 to 25.6.88. That as per Bipartite Settlement, he was called for interview. The select list was kept alive till March 1997. As tenure of temporary service of workman was less, was the last candidate appointed in that category, Ist party workman was not appointed in the Bank. The evidence of management remained unchallenged as Ist party workman failed to cross-examine.

7. Copies of Bipartite Settlement are produced. The settlement M-1 provides that the casual employees completed 30 days aggregate temporary service in any calendar year after 1.7.75 or 70 days aggregate temporary service in any continuous block of 36 calendar months after 1.7.75 are to be given chance for permanent appointment. Ist party workman has not worked for 70 days in 36 calendar months. He has failed to adduce evidence. As per evidence of management's witness, workman had worked only for 60 days during the period from 16.4.88 to 25.6.88. The workman has failed to adduce evidence in support of his claim. The action of the IInd party management cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

(i) Action of the management in not granting appointment to Shri Mahesh Shinde even after called for him for interview on 13.2.97 is legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2079.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 267/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4.09.2013 को प्राप्त हुआ था।

[सं॰ एल-22012/179/2003-आई आर (सी एम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 4th September, 2013

S.O. 2079.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 267/2003 of the Cent. Govt. Indis. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, Food Corporation of India, and their workmen, received by the Central Government on 04.09.2013

[No. L-22012/179/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/267/2003 Dated: 02.04.2013

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur- 440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgate, Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar,
Ward No. 2, Near Boudha Vihar,
Post : Wardha, Distt. Wardha (M.S.)

AWARD

(Dated : 2nd April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(a) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Ashok Narayan Adagale, for adjudication, as per letter No. L-22012/179/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Ashok Narayan Adagale, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ashok Narayan Adagale, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 23.08.1993 and he was initially engaged through a contractor at Akola Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Akola Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 23.08.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointement and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on

01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that FCI had not issued any advertisement calling application and they had not applied to the FCI for service and he was not interviewed by the FCI and they were appointed through contractor by the management and they were brought by Singh Security Services and they were handed over to FCI and he has not filed salary slip and he does not know the name of the contractor through whom they were appointed and he was not filed any document to show that he worked for 240 days every year and the muster rolls Exts. M-4 & M-5 are the muster roll of Singh Security Services and his name has been mentioned in the said rolls and he received the salary from Singh Security Services as per acquaintance roll for the month of September, 1995 as per Ext. M-6 and the same bears his signature in English.

6. One Shri Meghraj Jairam Waghmare has been examined as a witness on behalf of the party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination in chief, which is on affidavit. In his cross-examination, this witness has admitted that the workman was appointed on 23.08.1993. He has also admitted the suggestions given to him in his cross-examination that contract for supply of security guards was given to Singh Security Services for two years and subsequently the same was extended till 15.12.1996 and the contract for supply of security guards was also given to Bombay Intelligence Security India Pvt. Ltd. from 01.03.1989 to 28.02.1991, to Commando Security Force, Pune from 01.04.1991 to 31.03.1993, to M/s. Chaitanya Industrial Security and Investigation Services, Amravati from January 1992 to may, 1992, to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 01.03.1993 and M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by the FCI. This witness has also admitted that inspite of change of the contractors, the workman worked continuously in FCI from 23.08.1993 till 14.03.1999 and on 14.03.1999, the contract of supply of security guards was given to M/s. Industrial Security and Fire Services, Bombay by FCI. This witness has further admitted that the concerned offiers of F.C.I. were issuing necessary directions to the petitioner and other security guards and the contractors engaged by the FCI were paying wages to the Security Guards deployed by them.

7. At the time of argument, it was submitted by the Union representative for the workman that the workman was engaged by the management of FCI on 23.08.1993 at Akola depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the party no. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by party no. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the party no. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the party no. 1 and he was never a contract labour and such action of the party no. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 03.05.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the party no. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the party no. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the party no. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd.&Anr. *Vs*. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the party no. 1 nor the so called contractors engaged by the party no. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the party no. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the party no. 1 and the party no. 1 is the real employer and there was master and servant relationship between the party no. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though party no. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party no. 1 till 14.03.1999 and the party no. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of party no. 1 and it was party no. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs*. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs*. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs*. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that party no. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party no. 1 that the workman was never appointed by party no. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party no. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party no. 1 complying with the due procedure of termination and there was no relationship of master and servant between the party no. 1 and the workman and the party no. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notificaiton of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party no. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party no. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the party no. 1 that the party no. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by party no. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal

(Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29-07-2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workman of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly apppointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and the worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party no. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract laboures, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licnesing authority. The licnese so issued my contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employers of the principal employer especially when the principal employer is the central government or the state Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *V.*

Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amentities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V*. Union of India, 1985 I CLR SC 165-(1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V*. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V*. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interest of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957—I—LLJ—477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC—3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provision of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997 (Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom.) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for non-production of documents

as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No.1 had engaged the workman and others as contract labouers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade complaince of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is place by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2080.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार शिवपुरी गुना क्षेत्रीय ग्रामीण बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 141/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2013 को प्राप्त हुआ था।

[सं॰ एल-12012/202/91-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th September, 2013

S.O. 2080.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 141/91) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Shivpuri Guna Kshetriya Gramin Bank and their workmen, received by the Central Government on 5/09/2013.

[No. L-12012/202/91 - IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/141/91

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Kamta Prasad Moyle,
Post Mukam, Athaikheda, Mungawali,
Distt. Guna (MP) ....Workman

Versus

President,
Shivpuri Guna Kshetriya Gramin Bank,
Regional Office, 136,
Arya Samaj Road,
Shivpuri ....Management

AWARD

Passed on this 31st day of July, 2013

1. As per letter dated 31-1-91 by the Government of India, Ministry of Labour, New Delhi, the reference is recieved. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/202/91-IR(B-III). The dispute under reference relates to:

> "Whether the action of the management of the Shivpuri Guna Kshetriya Gramin Bank in terminating the services of Shri Kamta Prasad Moyale *w.e.f.* 6-12-86 was justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notice issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/2. Workman submits that he was working as messenger in IInd party bank from 1-1-84. He was continuously working till 5-12-86. Surprisingly he was discontinued from service without notice or without paying retrenchment compensation. He was not served with chargesheet. His service record was satisfactory and his services are illegally terminated. On such grounds, workman prays for reinstatement with consequential benefits.

3. Management filed Written Statement at page 7/1 to 7/3. The claim of Ist party workman is denied. It is submitted by IInd party that the workman was engaged on daily wages during 1-1-86 to 5-12-86. There were complaints against him. His services were on purely contractual on daily wage basis. Notices were issued to him for certain misconducts. That he has discussed confidential matters of the Bank in public. Therefore contract of his service was not continued. The non-engagement of Ist party workman from 5-12-86 is covered under Section 2(oo) (bb) of I.D. Act as his services are terminated because of non-renewal of the contract. Other contentions of workman are denied. It is denied that the services of workman were terminated in violation of Section 25-F of I.D. Act. It is denied that workman was regularly working from 1-1-84 to 5-12-86. On such ground, IInd party prays for rejection of claim of workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of the Shivpuri Guna Kshetriya Gramin Bank in terminating the services of Shri Kamta Prasad Moyale *w.e.f.* 6-12-86 is legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASON

5. The evidence of workman is recorded in the Case. Workman has stated that he was working in Bank from 1-1-1984 to 5-12-1986. He was working continuously. His service record was unblemished. He was working as messenger. His services were terminated without notice, without assigning any reason. In his cross-examination, workman says that he was working on daily wages, he was paid initially Rs. 7 per day and subsequently Rs. 8.70 per day. That he known Mukesh Kumar Jain and Kishore but their statements were not recorded in his presence. After termination of his service, he had submitted representations to Collector, Manager of the Bank. He claims ignorance about reports about him. The evidence of workman that he was continuously working from 1-1-84 to 5-12-86 is not shattered in his cross-examination. The IInd Party has also not disputed that the workman was working in Bank but IInd party claims that workman was working on contractual daily wage basis. Any such contract is not produced by the management.

6. Management filed affidavit of evidence Shri R.K. Dubey. Said witness was not made available for his cross-examination. Affidavit of Shri V.D. Shrivastava is also field but said witness was also not made available for his cross-

examination. Therefore evidence of witnesses of the management cannot be accepted for deciding the matter in dispute.

7. Workman was again filed affidavit of his evidence but he was not cross-examined. It appears that parties appear in the proceeding rarely. IInd party has not properly participated in the proceeding. He witness of the management are not made available for cross-examination. The evidence discussed above shows that workman was continuously working with IInd party management till 5-12-86. His services are terminated without notice in violation of Section 25-F of I.D. Act. For above reasons, I record my findings in Point No. 1 in Negative.

8. As to Point No. 2, the question arises to what relief the workman is entitled? Whether workman is entitled for reinstatement with back wages. The evidence of workman shows that he was working on daily wages. He had not faced selection process. Workman had worked for about 3 years. He is not in employment from December, 1986 for almost 27 years. Therefore the reinstatement of Ist party workman would not be justified. In my considered view reasonable compensation amount would meet the ends of justice. Amount of Rs. 50,000 as compensation would be adequate. Accordingly I record my findings in Point No. 2.

9. In the result, award is passed as under:—

(1) Action of the management of the Shivpuri Guna Kshetriya Gramin Bank in terminating the services of Shri Kamta Prasad Moyale *w.e.f.* 6-12-86 is illegal.

(2) IInd party is directed to pay compensation Rs. 50,000 to Ist party workman, notice pay equal to 30 days wages, retrenchment compensation equal to 45 days wages.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2081.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 212/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/09/2013 प्राप्त हुआ था।

[सं॰ एल-41012/201/98-आईआर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th September, 2013

S.O. 2081.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 212/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 04/09/2013.

[No. L-41012/201/98-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/212/99

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Ravindra Kumar Gupta,
C/o Puran Singh Thakur,
Qr. No. C-17,
Vijay Nagar, 90 Quarters,
State Bank Colony,
Jabalpur (MP) ....Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur (MP) .....Management

AWARD

Passed on this 31st day of June 2013

1. As per letter dated 17-5-99 by the Government of India, Ministry of Labour, New Delhi, the reference is recieved. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-41012/201/98-IR(B-1). The dispute under reference relates to:

> "Whether the action of the management of the Central Railway, Jabalpur in terminating the services of Shri Ravindra Kumar Gupta is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 4/1 to 4/2. Case of Ist party workman is that he was appointed as casual labour from 5-5-1981. He was working till 29-6-94. His services were arbitrarily retrenched without issuing showcause notice, no retrenchment benefit was given to him. That he had completed 930 days working and gained temporary status. His services were governed by disciplinary rules. That the instructions of Railway Board for providing termporary status to him was not followed. He had appeared for medical examination and passed in Class B-1. His services are illegally terminated in violation of Article 14 of the constitution.

3. IInd party filed reply to the statement of claim. It is submitted by IInd party that Ist party was employed as casual

labour. He worked for 52 days in the year 1981, 86 days in 1984, 65 days in 1983, 86 days in 1984 and 103 days in 1988-89. That the workman was engaged for providing drinking water during summer days, his services were discontinued after end of summer. He had worked on contract basis. He had not acquired status of temporary employee. His services were not required, therefore his services were discontinued. His services end after end of contract.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of the Central Railway, Jabalpur in terminating the services of Shri Ravindra Kumar Gupta is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled by?	Relief prayed by are workman are rejected.

REASONS

5. The workman though challenged termination of his service, he has also claimed that he had acquired status of temporary employee. The workman failed to adduce any evidence. His evidence was closed on 24-6-2010. Management filed affidavit of evidence of witness Shri Ashok Kumar Gupta. The witness of the management has stated on oath that workman has not completed 240 days preceding 12 months from the date of his termination. That workman had intermittently worked as casual labour during Summer Season. He had worked for 289 days in the first four years thereafter 103 days since 1988-89. His evidence remained unchallenged as workman failed to cross-examine the said witness. I donot find reason to disbelieve his evidence. The evidence on record shows that workman has not completed 240 days continuous service preceding his date of termination therefore he is not covered as workman under Section 25(B) of I.D. Act. He is not entitled to protection under Section 25-F of I.D. Act. For above reasons, discontinuance of service of workman cannot be said illegal. I therefore record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

1. The action of the management of Central Railway, Jabalpur in terminating the services of Shri Ravindra Kumar Gupta is legal.
2. Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 सितम्बर 2013

का॰आ॰ 2082.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स पी जी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 26/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-42012/3/2000-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 4th September, 2013

S.O. 2082.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of PGCL and their workmen, received by the Central Government on 04/09/2013.

[No. L-42012/3/2000-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/26/2002 Date: 29.05.2013

Party No. 1 : The Executive Director,
Power Grid Corporation of India Ltd.,
Samprati Nagar, Nari Ring Road,
Post: Uppalwadi, Nagpur-440026

: The Manager,
M/s. Nirmal Nursery, HO: Hanuman Mandir, Dhanghar Pura, Tatya Tope Nagar, Nagpur.

Party No. 2 : Shri Manohar Antuji Bawane,
C/o. Nagpur General Labour Union,
306-Shanichara, Subhash Road,
Back side of Khandoba Temple,
Nagpur-440018.

AWARD

(Dated: 29th May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Power Grid Corporation of India Ltd. and their workman, Shri Manohar Bawane, for adjudication, as per letter No. L-42012/3/2000-IR (CM-II) dated 12.02.2001, with the following schedule:—

"Whether the action of the management of Power Grid Corporation in terminating the services of Sh. Manohar Antuji Bawane is legal and justified?

If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Manohar Bawane, ('the workman" in short), filed the statement of claim and the management of Power Grid Corporation Ltd., ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he came to be appointed by Party No. 1 as a permanent workman on 29.12.1996, to work in the garden and he used to look after the plants and trees, keep the garden clean, put new saplings and take care of them and to keep the vicinity of the bungalow clean and though he was appointed by the Party No. 1, no appointment order was given to him and he was paid wages by the Administrative Officer of Party No. 1 and as he was not paid the minimum wages and was not given the attendance card, pay slips and other legal benefits, he made a complaint to the Government Labour Officer for redress and Party No. 1 became furious when they came to know about this lodging of the complaint and as such, on 16-07-1997, when he came to attend his duties, the Administrative Officer called him to his office and scolded him for making the complaint and did not allow him to do the duty and thereafter, he went daily for duty, but he was not taken on duty and thus, he came to be terminated from services orally *w.e.f.* 16.07.1997. The further case of the workman is that he approached the Assistant Commissioner of Labour, Government of Maharashtra for conciliation, but his application was returned back due to want of jurisdiction and thereafter, he approached the Regional Commissioner (Central) for conciliation and on failure of the conciliation, failure report was submitted to the Government and in order to deny the legal benefits available to him, Party No. 1 took the stand that he was a contract employees and he was under the employment of M/s. Nirmal Nursery, the contractor, but he had neither any relationship with the contractor nor he had received any instruction from the said contract while in service and the work which was allotted to him was of permanent nature and after his termination, Party No. 1 carried out the work by a workman engaged through a contractor, in violation of the provision of law and he was terminated from service without any opportunity of hearing and neither any charge sheet was issued nor any enquiry was held against him before termination of his services and as such, his termination is illegal, arbitrary and in violation of the principle of natural justice and Party No. 1 neither maintained any senior list nor followed the provisions of the Act.

The workman has prayed for his reinstatement in service with full back wages and continuity.

3. The Party No. 1 in the written statement has pleaded *inter-alia* that the claim of the workman is not maintainable, as the dispute has been raised by him after a gap of four years and the claim is barred by law of limitation and as the workman has not given any explanation for such inordinate delay in raising the industrial dispute, the reference is liable to be answered in the negative. The further case of Party No. 1 is that there was no relationship of employer and employee between them and the workman was neve appointed by them as a permanent employee and the workman was a contract labour deployed by M/s. Nirmal Nursey and as the workman was not appointed by them, there was no question of giving of any appointment order to the workman and wages were being paid to the workman independently by M/s. Nirmal nursery and the workman was accepting the same without any grievance for protest what so ever and there was no privities of contract between them and the workman, so question of making payment of minimum wages or giving of attendance card, pay slip and other legal benefits does not arise. The specific plea of Party No. 1 is that they had invited tenders for maintenance of the nursery and after following the necessary formalities, the contract for the same was allotted to M/s. Nirmal Nursery and M/s. Nirmal Nursery had got itself registered as contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 ("Act 1970" in short) and the workman was engaged by the said contractor and till date, the appropriate Government has not issued any notification under the provisions of section 10 of the Act 1970, prohibiting them to engage contractor for doing any nature of work and as there was no relationship of employer and employee between them and the workman, there was no question of giving any chance of hearing to the workman, before the alleged termination and by raising the industrial dispute on false allegations, the workman is trying to get himself appointed with ulterior motive, which is impermissible in law and the workman is not entitled to any relief.

4. M/s. Nirmal Nursery though has been made a party in this case, neither it appeared in the case nor filed any written statement.

5. Both the parties have led oral evidence in support of their respective claims. Besides the oral evidence, both the parties have relied on documents to prove their respective case.

6. The workman has examined himself as a witness to prove his case. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has stated that he has not filed any appointment letter on record and he has also not filed any document to show that Party No. 1 had paid him his wages. It is necessary to mention here that the workman in his cross-examination has denied the signatures appearing on the payment vouchers regarding payment of wages to him by M/s. Nirmal Nursery.

7. Party No. 1 has examined two witnesses, out of whom, the first witness is Shri Ulhas S. Athale, a handwriting expert and the second witness is Shri K.G. Kulkarni, the Chief Manager (HR).

Shri Athale has been examined to show that the signatures, Exts. M-4 and M-5 on the vouchers, under which payment of wages was made belong to the workman. This witness has stated that the disputed signatures marked as D-1, D-2 and D-3 had been made by the same person, who had made the comparative signatures marked as S-1 to S-8. This witness has proved his report as Ext. M-7. From the cross-examination of the workman and the evidence of Shri Athale, it is clear that the signatures, Exts. M-4 and M-5 appearing on the vouchers, under which wages was paid by M/s. Nirmal Nursery to the workman belong to him.

8. The evidence of Shri Kulkarni is on affidavit. This witness in his examination-in-chief has reiterated the facts mentioned by Party No. 1 in the written statement. In his cross-examination, this witness has stated that he knows about the engagement of the workman in the power grid corporation through a contractor and there was no question of payment of wages directly by the power grid corporation to the workman, as he was engaged by the contractor in the power grid.

9. On persual of the materials on record including the evidence, both oral and documentary, adduced by the parties and taking into consideration the submissions made by the learned advocates for the parties, it is found that the claim of the workman that he was appointed by the Party No. 1 as a permanent workman on 29.12.1996 is not true. It is clear from the documents on record and especially from Ext. W-4, the inspection report of the labour Officer and Inspector under Minimum Wages Act, Nagpur, dated 28.07.1997, which has been filed and relied by the workman himself that the workman was a contract labour and he was deployed by M/s. Nirmal Nursery, the contractor, who had been given the job of maintenance of the Nursery on contract by the Party No. 1, to work with Party No. 1 and wages was paid by the said contractor to the workman for the same. Ext. W-4 clearly indicates that the workman, whose name is found at serial no. 8 of list of the workers, was working in power grid alongwith seven others, being engaged by M/s. Nirmal Nursery, the contractor. The workman in his cross-examination has stated that the document Ext. W-4, the inspection report filed by him is correct. From the evidence on record, it is clear that the workman was engaged by the contractor M/s. Nirmal Nursery to work with the Party No. 1 and there was no employer and employee relationship between the Party No. 1 and the workman and there was no violation of any provision of the Act by Party No. 1. It is also found that the workman has not made any allegation or grievance against M/s. Nirmal Nursery of violating any provision of the Act. Hence, it is ordered:—

ORDER

The reference is answered in negative and against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 4 सितम्बर 2013

का॰आ॰ 2083.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 32/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/101/2003-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 4th September, 2013

S.O. 2083.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Murpar Project of (Umrer Area) of WCL and their workmen, received by the Central Government on 04/09/2013.

[No. L-22012/101/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/32/2006 Date: 03.05.2013

Party No. 1(a) : The Sub Area Manager, WCL Murpar Project of (Umrer Area) of WCL, Post: Khadasanghi, Tah-Chimur, Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons, WCL Contractor, Singhnagar, Dahegaon, Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No. 2 : The Maroti S/o Sh. Tukaram Todase, R/o. Murpar, Post: Khadsangi, Teh.-Chimur, Distt. Chandrapur Maharashtra.

AWARD

(Dated: 3rd May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in

short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Maroti Tukaram Todase, for adjudication, as per letter No. L-22012/101/2003-IR (CM-II) dated 21.03.2006, with the following schedule:—

"Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Maroti S/o Tukaram Todase is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Maroti Tukaram Todase, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of Party No. 1(a) *i.e.* Sub-Area Manager, Murpar Project and Party No. 1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the Party No. 1(a) also engaged Party No. 1(b), M/s. Singh & Sons in its work *w.e.f.* 05.01.1997 and till Party No. 1(b) is working with Party No. 1(a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by B.G.M.L. as a General Mazdoor on 24.08.1993 and he continued to work till 02.07.1996 and thereafter, his services were utilized by Party No. 1(b) *w.e.f.* 05.01.1997 continuously till 28.12.2001 and Party No. 1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of Party No. 1(a) and Party No. 1(a) is the principal employer and his appointment by both the contractors was oral and the Party No. 1(b) terminated his services orally *w.e.f.* 29.12.2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by Parties No. 1(a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with Parties No. 1(a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with Parties No. 1(a) and 1(b), but they did not re-employ him in violation of section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the Parties No. 1(a) and 1(b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as Party No. 1 was the principal employer and Party No. 1(b) was the contractor of Party No. 1(a), for each and every act of the Party No. 1(b), the Party No. 1(a) was responsible and as such, the Party No. 1(a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No. 1(a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, Party No. 1(b) neither appeared in the case nor contested the claim.

In its written statement, the Party No. 1(a) has pleaded *inter-alia* that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period 3½ months and the incline shaft drivage within eight months and it also awarded another contract to Party No. 1(b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01.01.1997 and 28.02.1998 respectively and after a gap of 15 months, another contract was given to Party No. 1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29.05.1999 and 01.12.2001 respectively and it [Party No. 1(a)] was related to Party No. 1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the Party No. 1(a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by Party No. 1(b) for contract works at Murpar

project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka *Vs.* Umadevi, Union Public Service Commission *Vs*. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of Party No. 1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to Party No. 1(b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It is necessary to mention here that even though sufficient opportunity was given to the parties to adduce evidence in support of their respective claims, they failed to adduce any evidence. Both the parties remained absent on 28.02.2013, 18.03.2013, 03.04.2013 and 09.04.2013 and also did not make any argument. Hence the case was closed for award.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case as the workman has not adduced any evidence to prove the legality of the order, he is not entitled for any relief.

6. Moreover, in this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar Colliery by Party No. 1(a) and BGML engaged him from 24.08.1993 to 02.07.1996 as a General Mazdoor and he was again engaged by Party No. 1(b), another contractor from 05.01.1997 to 28.12.2001. It is never the case of the workman that he was engaged or appointed by Party No. 1(a). The only claim of the workman is that Party No. 1(a) had sent him for vocational training and he had under gone the training successfully. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of Party No. 1(a), as because, he was sent for vocational training by Party No. 1(a).

7. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the Party No. 1(a) and he was employed by the contractors and the Party No. 1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence it cannot be said that the workman was the workman of the principal employer.

8. So far the termination of the services of the workman by the Party No. 1(b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery *Vs.* Their workmen) have held that:—

> "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not

different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25-B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B."

In the decision reported in AIR 1981 SC-1253 (Mehanlal *Vs.* M/s. Bharat Electronics Ltd.) the Hon'ble Apex Court have held that:—

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2) - Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases - Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, *i.e*. the date of retrenchment. If he has, he would be deemed to be in continuous service for period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay *Vs.* Rajeev Kumar) has held that:—

"Industrial Disputes Act (14 of 1947 - S. 25-F, 10-Retrenchment compensation — Termination of services without payment of — Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination — Claim denied by management — Onus lies upon workman to show that he had in fact worked for 240 days in a year — In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

9. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

10. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29.12.2001, the workman had worked for 240 days.

11. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29.12.2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer.

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2084.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जैट एयरवेज के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 202 का 2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/09/2013 को प्राप्त हुआ था।

[सं. एल-11012/61/2001-आईआर (सी एम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 4th September, 2013

S.O. 2084.—In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 202/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Jet Airways (India) Ltd., and their workmen, received by the Central Government on 03/09/2013.

[No. L-11012/61/2001-IR(CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI.

I.D. No. 202/2011

Shri Naresh Kumar
R/o. Vill. & Post Tandahare,
Block-Bahadurgarh,
Distt. Rohtak,
Haryana-124507 ...Workman

Versus

The General Manager (NR),
M/s. Jet Airways (India) Ltd.,
Jet Airways House, 13,
Community Centre,
New Delhi-110006 ...Management

AWARD

A loader-cum-cleaner joined services with Jet Airways (India) Ltd., (in short the Airways) on 23.03.1998. He served the Airways till 22.08.1998. He was engaged again on 02.11.1998. He claimed overtime allowance for 281 hours (187 hours for December 1999 and 94 hours for January 2000), which overtime allowance was paid to him in February 2000. He again claimed overtime allowance for 162 hours for January 2000, by playing fraud. As fraud came to light, he was made to leave by the Airways, without initiating any domestic action. After sometime, he raised a demand for reinstatement in service. When his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer. Before that forum, the Airways took a plea that the loader-cum-cleaner resigned from service *vide* letter dated 09.03.2000. Since his claim was contested by the Airways, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11012/61/2001-IR(C-1), New Delhi dated 27.09.2001 with following terms:—

> "Whether action of the management, General Manager, Jet Airways India Ltd., 13, Community Centre, Yusuf Sarai, New Delhi-110006, in stopping Shri Naresh Kumar, ex-loader-cum-cleaner from service with effect from 10.02.2000 is just and reasonable. If not, to what relief is the workman entitled to?

2. Claim statament was filed by the loader-cum-cleaner, namely, Shri Naresh Kumar pleading that he joined services with the Airways on 23.03.1998. His salary as Rs. 2675.00 per month. He worked to the entire satisfaction of his superiors. He never gave any chance of complaint to them. As per police of the Airways, notional break in his service was given on 22.08.1998. He was engaged again on 02.11.1998. He agitates that notional breaks were given in his service by the Airways from time to time, with a view to avoid his claim for regularization in service, which act amounts to unfair labour practice.

3. Claimant presents that on10.02.2000, he was asked by the Airways to contact them for job after a period of one month. Neither charge sheet was served upon him nor any written order was issued. He approached the Airways for a job, but was not accommodated for reasons best known to them. He served notice of demand on 10.07.2000, which was received by the Airways on 13.07.2000. In spite of serving of demand notice, he was not allowed to join duties. Persons junior to him are still working with the Airways. Provisions of section 25G and 25H of the Industrial Disputes Act, 1947 (in short the Act) have been violated. The Airways also violated provisions relating to payment of retrenchment compensation, as enacted under section 25F of the Act. Order terminating his service is contrary to law. He was put on roads without any rhyme or reason. He claims that order dated 10.02.2000 may be set aside and he may be reinstated in service with continuity and full back wages.

4. Claim was demurred by the Airways pleading that the claimant presented wrong facts to the effect that he was engaged on 23.03.1998 and was drawing a salary of Rs. 2675.00 per month. The Airways never gave notional break in his service. However it has not been disputed that the claimant was engaged by the Airways as a loader-cum-cleaner. It has been pleaded that he claimed overtime allowance for 281 hours (187 hours for December 1999 and 94 hours for January 2000), which claim was disbursed in his favour along with his salary for the month of February 2000. He again claimed overtime allowance for 162 hours for January 2000 by way of presenting a forged voucher. When his forgery came to light, he was confronted with overtime alowance sheets. He admitted his mistake and tendered an apology, in writing. He promised not to do such mistake in future. Since gross misconduct was committed by the claimant, the Airways decided to institute disciplinary action against him. When he came to know about the said action, he approached the Airways voluntarily and tendered his resignation on 09.03.2000. His resignation was accepted with immediate effect. Since he himself has resigned from service of the Airways, he cannot claim that provisions of section 25-F, 25-G and 25-H of the Act were violated. The Airways had not committed any illegality, not to talk of unfair labour practice. It has been claimed that claim projected is devoid of merits and it may be dismissed.

5. *Vide* order No. Z-22019/6/2007-IR(C-II), New Delhi dated 11.02.2008, the case was transferred to the Central Government Industrial No. II, New Delhi, for adjudication by the appropriate Government. It was re-transferred to this Tribunal for adjudication, *vide* order No. Z-22019/6/2007-IR(C-II), New Delhi dated 30.03.2011 by the appropriate Government.

6. Claimant has examined himself in support of his claim. Shri V.C. Mishra (MW1), Shri Bharat Bhushan Yadav (MW2) and Shri Surender Sharma (MW3) were examined on behalf of the Airways.

7. Arguments were heard at the bar. Shri P.N. Dwivedi, authorized representative, advanced arguments on behalf of the claimant. Shri Anil Bhat, authorized representative, raised submissions on behalf of the Airways. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:—

8. In his affidavit Ex. WW1/A, tendered as evidence, the claimant swears that he joined the Airways on 23.03.1998 as loader-cum-cleaner. The Airways used to issue appointment letters in his favour from time to time. On 12.03.1998, 02.07.1998, 14.12.1998, 31.03.1999 and 30.04.1999, appointment letters were issued in his favour, copies of which appointment letters are Ex. WW1/1 to Ex. WW1/5. Pay advice slips were also issued in his favour, which are Ex. WW1/7 to Ex. WW1/29. He worked with the Airways with sincerity and honesty. He raised a demand for regularization of his services, by to no avail. His services were dispensed with on10.02.2000 without issuance of any charge sheet or giving any reasons. Juniors to him are still working with the Airways. Termination of his service amounts to retrenchment. He raised a demand for reinstatement *vide* letter dated 10.07.2000, copy of which is Ex. WW1/30. During the course of his cross examination he concedes that Ex. WW1/M2 and Ex. WW1/M3 bear his signatures, which are overtime allowance sheets submitted by him. He further admits that prior to 10.07.2000 he had not made any representation against termination of his service.

9. Shri V.C. Mishra, Handwriting Expert, entered the witness box to prove his report Ex. MW1/7. He unfolds that his report may be read alongwith photographs Ex. MM1/1 to Ex. MW1/6. In report Ex. MW1/7 Shri Mishra has opined that signatures on resignation letter were written by the claimant.

10. Shri Bharat Bhushan Yadav unfolds in his affidavit Ex. MW2/1 that services of the claimant were not terminated on 10.02.2000, as claimed. He projects that the claimant claimed overtime allowance for 282 hours (187 hours for December 1999 and 94 hours for January 2000), which claim was reimbursed in his favour in February 2000. He again claimed overtime allowance for 162 hours for January 2000 by forging signatures of Head of the Department on the vouchers. When he was confronted with the overtime allowance sheet, he admitted his guilt. He resigned from services *vide* letter dated 09.03.2000, which was accepted by the Airways on that very day. Claimant left services of the Airways of his own and his demand for reinstatement in service is uncalled for.

11. Shri Surender Sharma, unfolded that in the year 2000, claimant presented bogus claim relating to overtime allowance. The Airways wanted to dispense with his services on that account. The union intervened. The claimant was seeking pardon but the Airways was not ready to pardon him. The Airways suggested that the claimant may tender his resignation and the claimant followed suit. Ex.MW1/W1 was written by the claimant in his own hand. He (witness) signed Ex.MW1/W1 at point A, while Shri Nihal Singh signed it at point B.

12. When facts unfolded by the claimant and those presented by Shri Bharat Bhushan Yadav are appreciated, it came to light that the claimant joined his services with the Airways on 23.03.1998. He worked with the Airways for a period of 6 months. He was again engaged on 02.11.1998 and appointment letter Ex.WW1/3 was issued in his favour. Ex.WW1/3 spells that he was appointed as trainee loader-cum-cleaner for a period of 6 months. This appointment letter was followed by Ex.WW1/4, wherein it has been mentioned that probation of the claimant was extended for another term of 6 months. Ex.WW1/5 brings it over the record that appointment as loader-cum-cleaner was given to the claimant from 01.05.1999 by the Airways. In this letter, it was mentioned that the claimant shall be on probation for a period of three months. Thus, it is emerging over the record that the Airways had issued various appointment letters in favour of the claimant. At one point of time, his probation was extended for a period of 6 months with effect from 01.04.1999, but again fresh appointment letter was issued on 01.05.1999, which appointment letter again contained a stipulation to the effect that probation period shall be of 3 months. Thus it is emerging over the record that the Airways had given breaks in service of the claimant with an intention to discontinue his services so that he may not claim benefit of provisions of the Act. Stipulation, relating to probation, was mentioned in his appointment letters with a view to dispense with his services at their whims and fancies, under probation clause. The Airways had adopted unfair labour practice and breaks in service of the claimant were given with a view to keep sword of Democles hanging over his head in the form of period of probation.

13. Question for consideration would be as to whether claimant had rendered continuous service with the Airways for a period of one year from the date of alleged termination of his services. For an answer, it would be ascertained as to what the term 'continuous service' means. "Continuous Service" has been defined by section 25-B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the

"continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

14. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

15. When the workman concerned fails to establish that he worked for atleast 240 days in the year, he cannot claim protection against termination of his services in order to seek regulaization of his services on monthly salary with benefits like pension, gratuity etc. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if wokmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration comes as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. Apex Court was comprehended with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539]. It was ruled therein that the expression 'actually worked under the employer' cannot mean those days only when me workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. Court ruled that Sundays and other holidays, would be comprehended in the words 'actual work' and its countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the wokmen had actually worked though he had not so worked and no other days. The court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

16. Now facts are to be scanned. As unfolded by Shri Bharat Bhushan Yadav, claimant tendered his resignation on 09.03.2000. Therefore, from these facts, it emerged over the record that on 09.03.2000 claimant attended his duties. Shri Bharat Bhushan Yadav is silent on the proposition as to whether the claimant was absent from his service for a long spell in preceding 12 months from 09.03.2000. On this point, claimant asserts that he rendered continuous service with the Airways without any break. During the course of his cross examination, it was not highlighted by the Airways that there were breaks in his service in preceding 12 months from 09.03.2000. Through his unchallenged testimony, coupled with documentary evidence in the form of his appointment letters, refered above, the claimant could establish that he had rendered continuous service of 240 days, in preceding 12 months from 9.3.2000. He has also rendered continuous service of more than 240 days in preceding 12 months from 09.03.1999. Resultantly, it is crystal clear that he claimant has been in continuous service for a period of one year, as contemplated by provisions of section 25-B of the Act.

17. The Airways projects a claim that Shri Naresh Kumar presented wrong claim for overtime allowance. Shri Bharat Bhushan Yadav details that the claimant presented claim for overtime allowance of 281 days (187 days in December 1999 and 94 days in Januay 2000), which

claim was disbursed alongwith salary for February 2000. Claimant again presented wrong claim for 162 days overtime allowance for January 2000. Overtime voucher was fabricated, since signatures of the Head of the Department were forged. When he was confronted with the forged overtime voucher, he tendered his apology and promised not to commit such mistake in future. However, the Airways decided to institute a domestic action. At that juncture, the claimant approached the Airways and tendered his resignation. As a special case, his request was acceded to and he was allowed to resign from service. His resignation was accepted, which letter is Ex. MW1/W2 (carbon copy of this document was also proved as Ex. MW1/W1). Shri Surender Sharma gives confirmation to the facts narrated by Shri Yadav when he details that the claimant tendered his resignation to the Airways, which is Ex. MW1/W1. He tendered his resignation voluntarily. His (witness) signatures appears as point 'A' on Ex. MW1/W1 while signatures of Shri Nihal Singh, President of the union, appears at point 'B', Shri V.C. Mishra, Handwriting Expert, opines that on examination and comparison of disputed signatures with the admitted ones, he was of the view that the disputed signature, on resignation letter dated 09.03.2000, was written by the claimant. He detailed reasons for his opinion in his report Ex. MW1/7.

18. With a view to ascertain veracity of facts unfolded by these three witness, their depositions are construed on the yardsticks of truthfulness and honesty. Shri Bharat Bhushan Yadav presents that resignation of the claimant was accepted on the even date and that fact was communicated to him at the address furnished by him. Ex. MW1/W2 is he alleged resignation letter, while photocopy of this document was also proved as Ex. MW1/W1. This document is written in Hindi while purported signatures of the claimant, appearing at point 'A', are in English. Signatures of Shri Surender Sharma appears on this document, besides signatures of one Shri Nihal Singh, who was President of the union at the relevant time. No endorsement has been made either by the Shri Surender Sharma or Shri Nihal Singh as to why they have appended their signatures on the resignation letter. Neither the resignation letter spells as to why they appended their signatures on the document no any ocular facts are brought on record in that regard. During the course of his cross-examination, Shri Sharma has come out with a story that the union intervened when the Airways wanted to initiate domestic action against the claimant. As suggested by the Airways, resignation letter was tendered by the claimant and it was signed by them in taken to the fact that this resignation letter was in fact tendered by the claimant. When assessed on standards of ordinary human behaviour these facts are found to be farther from truth, As claimed, the union intervened to protect the claimant. In such a situation, there would have been a communication from the said of union. Absence of such a communication speaks volume about veracity of above story. No letter, addressed by the claimant to the union, has been filed to show that he requested the union to intervene. Furthermore, when alleged resignation was tendered, why dues of the claimant were not got settled, Shri Sharma is silent. These aspects make me to comment that Shri Sharma signed the resignation letter with a view to grind his axe and not to espouse the cause of the claimant.

19. Shri Bharat Bhushan Yadav presents that the resignation was accepted on the very date when it was presented by the claimant. However, facts tell a different story. Ex. MW 2/1 is a document on the strength of which the Airways communicated acceptance of resignation letter to the claimant. This document was alleged written on 09.03.2000 but was dispatched on 11.07.200. Through his letter the claimant was called upon to submit his clearance form alongwith original leave card and property of the Airways in his possession, to his employer. He was further advised to approach accounts department for settlement of his dues. When resignation of the claimant was accepted on 09.03.2000, as Ex. MW2/1 and Shri Yadav project, then why it was not communicated to the claimant personally on that very day, is proposition which was not answered by the Airways, Shri Bharat Bhushan Yadav presents a story that since the union wanted to ascertain about the bungling made by the claimant in overtime allowance claim, it resulted in delay in transmitting this document to the claimant. When Ex. MW1/W2 was signed by the General Secretary and President of the union on 09.03.2000 itself, there remained no necessity for the union to ascertain facts relating to bogus claim of overtime allowance made by the claimant. Therefore, theory projected by Shri Bharat Bhushan Yadav, relating to delay in communication of acceptance of resignation by the Airways in nothing but a pigment of imagination, Above surrounding facts make me to comment that Ex. MW2/1 was subsequently created by the Airlines with a view to project a defence that the resignation tendered by the claimant was accepted by it.

20. There is other face of the com. Ex. MW1/W2 was not even endorsed to the Airport Manager by any official of the Airways. Competent authority opted not to put its pen on this document, either with a view to accept it or to put it in the process of acceptance. Procedure of getting signautres of General Secretary and President of the union on a resignation letter, tendered by an employee, is foreign to the procedure of resignation and its acceptance by the employer. All these aspects highlight that facts unfolded by Shri Bharat Bhushan Yadav, in that regard, are farther from truth.

21. Shri Surender Sharma, presents that resignation letter was tendered by the claimant voluntarily. According to him, authorities had not put any pressure on the claimant to tender his resigation. He presents a story that when Airlines wanted to initiate a domestic action against the claimant, union intervened. According to Shri Sharma, during the course of discussion, it emerged that resignation of the claimant would be accepted by the Airways and as

such, he would avoid stigma of dismissal. Above facts when construed in the light of surrounding circumstances it came to light that at one point of time Shri Sharma presents that resignation letter was not tendered by the claimant to his employer in his presence. He highlights that Ex. MW1/W1 was not written by the claimant. he feigned ignorance as to who wrote it. He explains that the claimant showed his inability to write his resignation letter in Hindi and got it written from someone else. He asserts that resignation letter was written by someone else in his presence and the claimant signed it. When grilled Shri Sharma gave a twist to facts and testified that the resignation letter Ex. MW1/W2 was written by the claimant in his presence. Thus, facts unfolded by Shri Sharma are discrepant on the issue as to who wrote Ex. MW`/W2. Different versions, presented by Shri Sharma in this regard, are conclusive of a fact that Shri Sharma is a procured witness.

22. One other aspect also needs consideration. Shri Sharma deposes that the resignation was accepted orally by the authorities in his presence. However the admits that no order was written to the effect that resignation of the claimant has been accepted. As detailed above he could not point out as to why dues of the claimant were not settled when resignation was orally accepted there and then by the authorities. No explanation was offered by Shri Sharma as to why Ex. MW2/W1 was sent subsequently. As these asepcts give support to the above conclusion that Shri Sharma fabricated facts and detailed the same with a view to help the Airways. Testimony of Shri Sharma is found to be unworthy of credence and the same is, accordingly, discarded.

23. Shri V.C. Mishra, Handwriting Expert, details general characteristics of writing, in his report Ex. MW1/7, which are detailed below:

"1. Movement—The movement is wrist-cum -forearm in all 'D' and 'A' series signatures.

2. Line Quality—The line quality is smooth and perfect in all 'D' and 'A' series signatures.

3. Speed—The speed of all 'b' and 'A' series signatures is medium to rapid.

4. Skill—The skill of all 'D' and 'A' series signatures is medium.

5. Slant—The slant is slightly forward in 'D' and 'A' series signatures.

6. Alignment—The alignment is slightly ascending in 'D' and 'A' series signatures.

7. Co-ordination of writing muscles—There is perfect and rhythmic co-ordination of writintg muscles in 'D' and 'A' series signatures.

8. Variation—All the 'D' and 'A' series signautre show natural variations which is always found in 3-4 genuine signatures of each person because hand is not a rubber stamp. Sometimes, because of posture, supporting surface, thick and thin ball point pen, there may be additional natural variations.

9. Size and Proportion of letters—The ratio of heights, size and proportions are similar in 'D' and 'A' series signatures.

10. Spacing between letters—The spacing pattern between the letters is also similar, of course with natural variations".

24. As far as individual characteristics of letters in disputed and admitting writings are concerned, Shri Mishra details that all letters 'N' 'a', 'r', 'e', 's', 'h', 'K', 'u', 'm', 'a', 'r' show variations. He projects the author of the documents, examined and compared by him, to be a versatile penman. Detailing his reasons relating to individual characteristics, Shri Sharma opined that the disputed signatures on the resignation letter are of the claimant. However, when admitted signatures of the claimant on the documents examined by Shri Mishra are compared by the Tribunal with the disputed signatures, it came to light that admitted signatures show freedom, consistency and natural variation despite long time gap in their execution. The questioned signature marked Q1 show lack of freedom of execution of strokes and also show sign of hesitations etc. On comparison of questioned signature marked Q1 with the admitted signatures marked A1 to A4, divergences are observed in formation of characters and their minute and inconspicuous details such as-formation of letter 'N', sharp hooked commencement and curved nature of diagonal as observed in questioned signature found different in admitted signatures, formation of latter 'a', open nature of oval body part and its size as observed in questioned signature found different in admitted signautres, existence of eyelet at horizontal part of letter 'r' as observed in questioned signature nowhere observed in admitted signautres, formation of letter 'e', existence of eyelet in questioned signatures whereas it appears like letter 'i' in admitted signautres, manner of joining of letters 's' and 'h', angularity at body shoulder of letter 'h' is also found different in both the sets of signautres, formation of letters representing letters 'u' and 'm' in word 'Kumar' as observed in admitted signautres found characteristically different in questioned signautre, formation of terminal letter 'h', manner of its joining with previous letter and extended tapered terminal finish as observed in admitted signatures found different in questioned signatures etc.

25. Bisdes above, divergences are also observed in questioned signatures marked Q2 in word "Naresh" in comparison with admitted signatures marked A1 to A4, manner of formation of letter 'N' in multiple pen operations as well as curved nature of diagonal body part as observed in questioned signature found different in admitted signatures; formation of letter 'a', existence of hiatus

between oval body part and curved terminal part as observed in questioned signature nowhere observed in admitted signatures' design of letter 'r' is also observed to be characteristically different in both the sets, letter 'e' with open eyelet observed in questioned signature while its simplified form and appear as letter 'i' is observed in admitted signatures, formation of letter 'h', manner of its joining with pervious letter 's' and nature/angularity at its body shoulder found entirely different in both the sets of signatures etc. Both the sets of signature show divergences in nature of commencing and terminating stroke as well as relative size and proportion of characters etc. All the aforesaid divergences indicate that the claimant who wrote the admitted signatures, did not put his signature on the resignation letter Ex. MW1/W2 and Ex. MW1/W8. In view of these reasons it is announced that the report of Shri Mishra, which is Ex. MW1/7 is not acceptable. The said report is also discarded from consideration.

26. Net result of the above appreciation of facts is that Ex. MW1/W2, which is the alleged resignation letter, does not bear signature of the claimant.This document was created by the Airways with a view to project a case that the claimant tendered his resignation, which was witnessed by Shri Surender Sharma and Nihal Singh, Ex. MW1/W8 was also fabricated with a view to project that the claimant admitted his guilt, when he was confronted with false claim of overtime allowance. Story of tendering resignation is absolutely false. Consequently, it is announced that the Airways has failed to establish that the claimant tendered his resignation, which was accepted by them, there and then.

27. Why services of the claimant were dispensed with by the Airways? Answer to this proposition is available in the facts brought over the record. Shri Bharat Bhushan Yadav highlights that the claimant presented claim for overtime allowance for 281 hours (187 hours for December 1999 and 94 hours for January 2000), which claim was disbursed to him alongwith his salary for the month of February 2000. These facts remained un-assailed. Therefore, it is evident that overtime allowance claim, presented by Shri Naresh Kumar for overtime work performed by him in December 1999 and January 2000, was granted by the Airways. Shri Bharat Bhushan takes a step ahead and unfolds that the claimant again presented claim for overtime allowance for 162 hours for January 2000. He fabricated signatures of Head of the Department on the voucher. The said voucher has been produced as Ex. WW1/1 and Ex. WW1/2 (Ex. WW1/1 and Ex. WW1/2 relate to overtime for the month of January 2000. These documents project that the claim for overtime allowance for 162 hours for January 2000 was made by the claimant. Claimant admits his signatures, put by him against the claim for each day of the month, in these two documents. Therefore, it is evident that the claimant presented bogus claim for overtime allowance for 162 days in January 2000. When this bogus claim was noted, the Airways made the claimant to leave. It is emerging over the record that on this misconduct, claimant was shunted out in haste. The Airway had not conducted any enquiry against the claimant for misconduct committee by him. When opportunity to present his defence was not given to the claimant, action of the Airways in making the claimant to leave his job cannot be said to be in consonance of principles of natural justice.

28. Admittedly, it was a case of no enquiry. When action of the employer cannot be sustained for want of enquiry, employer has a right to prove misconduct of the employee before the Tribunal. In Ram Swarth Sinha (1954 L.A.C. 697), the Labour Appellate Tribunal recognized right of the employer to ask for permission to adduce evidence for the first time before the Tribunal to justify its action in a no enquiry case. Right of employer to defend the action not only on the basis of domestic enquiry but also to justify the punishment of discharge or dismissal on merits by adducing relevant evidence before the Tribunal has been recognized by the Apex Court in Motipur Sugar Factory Pvt. Ltd. [1965 (2) LLJ 161] and Gujarat Steel Tube Ltd. [1980 (1) LLJ 137].

29. In Delhi Cloth & General Mills Company Ltd. [1972 (1) LLJ 180] on review of earlier dicta, the Apex Court emphasizes that when no enquiry has been held by the employer or when enquiry has been found to be defective, employer has got a right to adduce evidence before the Tribunal to justify its action. In Firestone Tyre & Rubber Company [1973 (1) LLLJ 278] right of the employer to adduce evidence in such a situation was recognized by the Apex Court.

30. In State Bank of India [1971 (2) LLJ 599], the Apex Court announced that when order of punishment by way of dismissal or termination of service is effected by the employer, issue that is referred is whether the management was justified in discharge and termination of services of the workman concerned and whether the workman is entitled to any relief, in such a situation there may be case where enquiry has been held preceding order of termination or there can be no enquiry at all. But the dispute that will be referred is not whether the domestic enquiry has been conducted properly or not by the management, but the larger question whether the order termnination of dismissal or order imposing punishment on the workman concerned is justified. In such a case, employer has a right to justify action of dismissal before the Tribunal on the basis of domestic enquiry and failing that by adducing independent evidence. In Shankar Chakravarty [1979 (2) LLJ 192], the Apex Court recognized right of the employer to adduce evidence before the Tribunal to justify its action. Same view was expressed in Shambhunath Goyal (1933 Lab. I.C. 697). Thus, it is evident that in case of no enquiry, employer had a right to adduce evidence before a Tribunal to justify its action of termination of services of his employee.

31. Here is the case, evidence was adduced by the Airways to the effect that overtime claim presented by the claimant for the month of December 1999 and January 2000 was granted and payment was released in his favour alongwith the salary for February 2000. He again presented a claim for overtime allowance for 162 hours for January 2000, on which voucher he forged signatures of his Head of Department, under whom he was working at that time. During the course of cross examination, claimant admitted his signatures on Ex.WW1/M1 and Ex. WW1/M2 (which documents are photocopies of Ex. WW1/1 and Ex.WW1/2). Signature on Ex. WW1/1 and Ex.WW1/2 (which documents were inadvertently so exhibited) were admitted by the claimant during the course of admission and denial made on 15.11.2010. When these documents are considered it came to the light of the day that he presented subsequent claim for overtime allowance for 162 hours in Jnauary 2000, despite the fact that his overtime allowance claim for January 2000 was already granted. Claim presented for the second time pertains to 01.01.2000 to 31.01.2000. Thus it cannot be said that the claim, earlier granted in favour of the claimant, was in respect of a different period than the claim which was presented by him subsequently. These circumstances go to establish that the claimant presented bogus claim for overtime allowance for January 2000, on which documents he forged signatures of his superior. All these aspects highlight that the Airways has been successful in establishing that the claimant committed offence of forgery and attempt to cheat his employer, when he presented bogus claim towards overtime for the month of January 2000.

32. When an employee attempts to cheat his employer, the employer loses faith and confidence in him. Offence of forgery committed by the employee further projects that such an employee has no respect for law. He may go to any extent and damage reputation of his employer. Confidence and faith, which is the basic fabric of employer-employee relationship, has been put to an end. Such an employee does not have right to remain in service. Taking into consideration all these aspects, I am of the considered view that the claimant does not have a right to remain in service. Punishment of termination of service was rightly awarded to him for his misconduct, by his employer.

33. Whether punishment of termination of service would relate back to the date of order of termination effected by the Airways? For an answer, it is expedient to consider the precedents handed down by the Apex Court. In Ranipur Colliery [(1959) Supp. (2) SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was rules therein that if the enquiry is not defective, the Tribunal has only to see whether there was a *prima facie* case for dismissal and whether the employer had come to the bonafide conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

34. In Phulbari Tea Estate [1960 (1) S.C.R. 32] the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domstic enquiry and the workman had no opportunity to cross-examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

35. In P.H. Kalyani [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso to section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded "approval" to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is bonafide, the Tribunal will grant the approval" and the dismissal would "relate back to the date from which the employer had ordered dismissal". If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would "still relate back to the date when the order was made". Sasa Musa Sugar Works case (supra) was distinguished saying that observations made therein "apply only to a case where the

employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so until then the relation of employer and employee will continue in law and in fact".

36. D.C. Roy [(1976) Lab. I.C. 1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that "the ratio of Kalyani's case (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismisal was passed".

37. In Gujarat Steel Tubes Ltd. [1980 (1) LLJ 137] inverted image of the D.C. Roy's case was presented by a majority of three judge bench wherein it was held that "where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in D.C. Roy *Vs.* Presiding Officer (supra) has taken the view that full wages be paid until the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order". Though the court ruled that law laid in D.C. Roy is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in R. Thiruvirkolam [1997 (1) SCC 9] on the ground that they "are not in the line with the decision in Kalyani which was binding or with D.C. Roy to which learned Judge Krishan Iyer J. was a party. It also does not match with the juristic principle discussed in Wade". The view taken in R. Thiruvirkolam (supra) was affirmed in Punjab Dairy Development Corporation Ltd. [1997 (2) LLJ 1041].

38. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify the dismissal by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the dismissal is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

39. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in Ranjit Singh Tomar (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. In view of the above law, it is ordered that the order of termination of service will relate back to the date when the Airways passed that order against the claimant. Award is , accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 01.07.2013 Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2085.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,जबलपुर के पंचाट संदर्भ संख्या (129/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/09/2013 को प्राप्त हुआ था।

[संख्या एल-41012/60/2002-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th September, 2013

S.O. 2085.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 129/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 05.09.2013

[No. L-41012/60/2002-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/129/2003

Presiding Officer: SHRI R.B. PATLE

Shri Ramadhin,
S/o Shri Triloki,
H.No. 1041,
C/o Harishchand,
Nai Basti, Kanchghar,
Jabalpur ....Workman

Versus

The Divisional Railway Manager,
Central Railway, ...Management
Bhusawal (MP)

AWARD

Passed on this 7th day of August 2013

1. As per letter dated 25.7.2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of I.D. Act, 1947 as per Notification No. L-41012/60/2002-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Central Railway, Bhusawal in terminating the services of Shri Ramadhin is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 4/1 to 4/3. It is case of Ist party workman that he had worked in spells during 1985 to 1987 total 601 days in the Railways. He was working as monthly rated labour under PWI, Burhanpur. His services were abruptly discontinued from 8.2.87 without issuing notice or assigning reason. He claims that he was drawing monthly wages. He was holding temporary Status. His servies were governed by the Disciplinary and Appeal Rules as applicable to other temporary staff. His services could not be terminated without complying Article 311(2) of the Constitution. That he was not given opportunity for defence, non payment of retrenchment compensation are contrary to the rules, principals of natural justice were not followed. The termination of his service is illegal. That junior employees are continued. Only he was signaled out for arbitrary removal. It amounts to illegal retrenchment. On such ground, workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 8/1 to 8/5. IInd party denied that workman was working as daily rated casual labour. That the reference is submitted after 14 years. That workman was issued notice dated 26.1.87, his services were terminated after said notice initially Central Govt. had refused to make reference. As per judgment in Writ Petition No. 4609/02, the reference was made. The reference is belated and not tenable.

4. IInd party admits that workman was monthly rated labour but served in broken period. Rest of the contentions of workman are denied. It is submitted that the order of termination was issued on 15.6.87. The termination was effective from 18.2.87. The notice dated 26.1.87 was not replied by the workman. His services were terminated as he had secured service on bogus card No. **163225.** It is submitted that the claim of Ist party workman is based on false statement. On such grounds, IInd party prays for rejection of the claim of workman.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Central Railway, Bhusawal in terminating the services of Shri Ramadhin is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

Reasons

6. In his statement of claim, Ist party workman has pleased that the services are terminated without notice, without assigning reason, without giving opportunity of hearing in violation of Article 311(2) of Constitution. He was not paid retrenchment compensation. Termination of his service is illegal. In his affidavit of evidence, the workman has re-affirmed that his services were abruptly stopped from 18.2.87 without notice, without assigning reason. He was not given opportunity for his defence. The termination of his service is illegal for violation of Article 311(2) of the Constitution. His affidavit is silent about completing 240 days service during preceding 12 months of termination of his service. In his cross-examination, he says that he did not see any advertisement for the post, he had not submitted any application, no appointment letter was received by him, he was not interviewed. He was working on daily wages since 1982. His statement of claim is silent that he was working on daily wages from 1982. The workman was unable to explain any reasons for it. That as per oral orders of PWI, he started working from 1985 to 1987 under PWI, North Burhanpur. In his further cross-examination workman says that he has not written dates of commencing service from 1985. He was unable to explain delay of 14 years in submitting the dispute. Rather he said that repeatedly assurance was given to him by PWI from 1984 to 1986 therefore dispute was not filed. The entire evidence of the workman does not show that he had completed 240 days continuous service preceding his date of termination. The casual wage card exhibit M-2 shows working period 19.12.83 to 19.2.84. about 2 months, 19.2.84 to 19.3.84 about one months, 26.9.84 to 18.10.84 about 22 days, 25.10.84 to 18.11.84 about 23 days, 19.11.84 to 18.12.84 about 1 month, 19.12.84 to 18.1.95 about 1 month. The services of workman were terminated from 18.2.87. The working days preceding 12 months period are not shown in the document. The management has produced document Exhibit M-3 relating to the casual wage card. Though the management submits that the casual wage card issued to the workman was found bogus, the evidence on the point is not found satisfactory. However the workman is challenging the termination of his service alleging violation of the provisions of I.D. Act. The evidence adduced by workman is not established that the workman was continuously working for 240 days period preceding 12 calendar months prior to termination of his service. Thus there is no evidence to establish that the workman is covered under Section 25(B) of I.D. Act. Therefore he is not entitled to protection of Section 25-F of I.D. Act. The workman is therefore not entitled for one months notice or payment of retrenchment compensation as provided under Section 25-F(a) (b) of I.D. Act. Therefore the termination of his service cannot be said illegal or

violation of Section 25-F of I.D. Act. The evidence on record also doesnot show that Ist party workman had acquired status of temporary employee of the IInd party. Therefore he is not entitled to protection under Article 311(2) of the constitution. For above reasons, the termination of services of workman cannot be said illegal. Therefore I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

(1) The action of the management of Central Railway, Bhusawal in terminating of the services of Shri Ramadhin is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2086.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 119/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/260/2001-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2086.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 119/2002 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Kamptee Sub Area of WCL, and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/260/2001-IR (CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/119/2002 Date: 18.03.2013

Party No. 1 : The Sub Area Manager, Kamptee Sub Area of WCL, PO: Kamptee Colliery, Distt. Nagpur.

Versus

Party No. 2 : The President, Samyukta Khadan Mazdoor Sangh (SKMS), Kamptee Sub Area Branch, PO: Kamptee Colliery, Distt. Nagpur.

AWARD

(Dated: 18th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Gulchand Maniram, for adjudication, as per letter No. L-22012/260/2001-IR (CM-II) dated 10.07.2002, with the following schedule:—

> "Whether the action of the management of Kamptee Sub Area of WCL, Kamptee, Distt. Nagpur in dismissing Sh. Gulchand Maniram, General Mazdoor from services *w.e.f.* 30.09.1999 is proper legal and justified? If not, to what relief is the said workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Gulchand Maniram, ("the workman" in short) through his union, "Samyukta Khadan Mazdoor Sangh (SKMS)", ("the union" in short) filed the statement of claim and the management of WCL ("party no. 1" in short) filed the written statement.

The case of the workman as projected by the union in the statement of claim is that the workman was working as a General Mazdoor at Inder Colliery of Kamptee sub area from 08.09.1981 and on 15.01.1985, while he was working underground, the roof of the mine was collapsed and fell upon the workers working there and number of workers including the workman received serious injuries in the said accident and the workman sustained injury on his left leg (2nd, 3rd and 4th Metatarsus) and the workman was admitted in the Medical College Hospital, Nagpur, as an indoor patient for about seven days, whereafter, he was discharged from the hospital with advise to take treatment at home and after removal of the plaster and discharge from the hospital, the workman was not declared fit for duty and in the month of March, 1986, when the workman was asked to join his duty, he went to join his duty, but noticed that there was still pain in his left leg, so he again went to the Medical College Hospital for treatment and x-rays for the fractured bones were taken and he was also hospitalized and according to the opinion of the doctor of the said hospital, the injury caused to the workman was permanent injury and the Medical Officer of Inder Colliery declared the workman fit for light work on surface only and not for underground work and the workman was directed to take treatment in Walni hospital and though x-rays of the workman were taken at Walni hospital, the same were not produced before the Medical Board and in such circumstances, the Medical Board issued a certificate declaring him fit for underground work and on the basis of

the certificate issued by the Medical Board, the Party No. 1 assigned heavy duty to the workman in the underground and the workman was not able to work underground, because of the regular pain in his left leg, due to sustaining of fracture injury, whereby, certain bones were crushed to small particles and small cavity was formed, which was impossible to be repaired due to callus formation. The further case of the union of behalf of the workman is that the report of the Medical College Hospital along with x-rays and application of the workman for light duty on surface were submitted to Party No. 1 and inspite of repeated request from the workman, Party No. 1 refused to give him light duty on surface and as such, the workman could not able to join duty and some of the other workers, who had received injuries due to the accident along with the workman were given surface duty and the rest workers, who were not provided with surface duty, left the services of Party No. 1. It is further pleaded by the union that charge sheet dated 03.08.1991 was issued against the workman and he was asked to submit his explanation as to why he remained absent without any cause and the workman submitted his explanation on 14.08.1991, denying the charges and a departmental enquiry was held against him and during the pendency of the enquiry proceedings, the workman was transferred to Pipla Mines on 03.03.1999, to work underground and due to fracture of 2nd, 3rd, and 4th Metatarsus, he was not able to work underground, hence he could not join at Pipla Mines and thereafter, the union intervened in the dispute and satisfied the Party No. 1 about the inability of the workman to do heavy duty in underground and as such, the transfer of the workman was made from Pipla colliery to Inder colliery by order dated 01.06.1999 and the workman was asked to join at Inder colliery, but he was not permitted to join duties there and Party No. 1 called upon the workman to join at Inder colliery *vide* order dated 17.09.1999, so the workman joined his duties on 17.09.1999 and worked there till 28.09.1999 and the workman was dismissed from the services of WCL on 29.09.1999, *vide* dismissal order dated 11.09.1999 and the order of dismissal is improper, illegal and against the principles of natural justice, as because, when a new order comes into force, the old order automatically stands modified or set aside and in this case, in view of the order passed on 17.09.1999, dismissal order dated 11.09.1999 had no meaning and is non-existence and the charges were not established in the enquiry and the order of dismissal was not based on the principles of natural justice and the findings of the enquiry and documents relevant with the findings were not given to the workman and the order of dismissal was passed eight years after submission of the charge sheet, which was in violation of clause 28 (3) of the Certified Standing Orders.

Prayer has been made to set aside the order of dismissal dated 11.09.1999 and for the reinstatment of the workman in service with continuity and full back wages.

3. The Party No. 1 has pleaded in its written statement *inter-alia* that the workman was initially appointed as a casual General Mazdoor on 08.09.1981 and during the course of employment, on 15.01.1985, he sustained injury while working underground and the formalities required to be done were complied with and all necessary medical treatments were provided to the workman and the workman was sent to the screening committee of the Medical Board on 30.10.1985 and the Board found the workman fit for original duties and it was also declared that the injuries sustained by the workman were not permanent injuries and such fact was intimated to the workman *vide* letter dated 01.08.1986 and the verdict of the Medical Board was not challenged by the workman at any point of time and the workman, for unlawful gain, approached the Civil Court by filling S.C.S. No. 500/1987, for compensation of Rs. 50,000/- and the said suit was decreed in part of 19.07.1996 and management was directed to pay an amount of Rs. 25,000/- with costs and such amount was deposited with the court on 13.06.1997 and the appeal preferred by it against the said order is still pending and the learned Civil Court in its order has mentioned that the workman failed to establish that the injury caused to him is to be permanent injury and in view of the said finding of the learned Civil Court, the claim of the workman that he was unfit for underground duty is not sustainable and the workman having unauthorisedly absented from duties was rightly dismissed from services by following the process of law and after the report of the Medical Board, it was incumbent upon the workman to report for duties, but he never reported for duties and willfully and unauthorisedly remained absent from duties from 06.02.1987 and considering his long absence, charge sheet dated 03.08.1991 was submitted against him and the departmental enquiry was constituted on 05.03.1993 and the workman participated in the enquiry and prolonged the enquiry on one or the other reasons and raised flimsy grounds as regard to his attendance on various dates of the enquiry and the enquiry officer submitted his report on 01.07.1999 and basing on the findings, second show cause notice was issued to the workman on 29/30.07.1999 and finally the workman was dismissed on 27.09.1999.

It is further pleaded by the Party No. 1 that the grounds raised in the statement of claim are nothing but wild imaginations, more particularly to suit the needs to the workman to raise the dispute and from its records, it was found that the workman has never contributed to the union nor he is a member of the union and as such, the union has no locus standi to represent the workman and the contentions of the claim petition are nothing but an afterthought and the grounds raised are mischievous and frivolus, having no merits and are riased for unlawful gains and as such, the same need to be ignored and the reference is to be answered in negative.

The further case of Party No. 1 is that principles of natural justice were duly complied with by the enquiry officer and there is no allegation of conducting the enquiry improperly and the bare perusal of the charge sheet clearly indicates that the workman knowing fully well the repercussions did not act is good faith and full opportunity was given to the workman to defend himself in the inquiry and it has lost confidence in the workman, as he continuously remained absent from duties, which was detrimental to its interest and the workman worked only upto 06.02.1989 and thereafter, he remained unauthorisedly absent and taking advantage of the minor injury, the workman came up with a novel idea of not to work, which was willful and deliberate and it had considered few genuine applications of the workers, who had sustained injuries in the accident underground and there was absolutely no discrimination and the workman being fit for undergound duty was rightly called upon to perform the same, which he refused to do and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 25.05.2012, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was urged by the learned advocate for the workman that the workman while working in the underground mine, sustained permanent injuries on his left leg due to an accident on 15.01.1985 and after treatment, he was declared fit to do light duty only on surface by the doctor of Medical College Hospital, Nagpur, but inspite of the same, Party No. 1 assigned him heavy duty in the underground mine and the workman was not able to perform heavy duty in the underground and though the workman repeatedly applied for screening test and to provide him light work on surface, Party No. 1 neither sent him for screening test nor provided him any light duty on surfaced and as such, he could not be able to join duty and as the workman was injured during the course of employment, he was entitled for proper placement, but he was through out of employment by arbitary action, which is not at all proper. It was further submitted by the learned advocate for the workman that the principles of law and natural justice were over looked by the enquiry officer and as such, the conclusion and findings of the enquiry officer are not tenable and bad in law and the decision of Party No. 1 to dismiss the workman is unwarranted and the workman is entitled for reinstatement in service with continuity and full back wages.

6. Per contra, it was submitted by the learned advocate for the Party No. 1 that in this reference, the departmental enquiry conducted against the workman has already been held to be proper and in accordance with the principles of natural justice and the workman did not challenge the legality or fairness of the enquiry proceedings, so this Tribunal could not examine the findings of the enquiry officer.

In support of such contentions, the learned advocate for the Party No. 1 placed reliance on the decision reported in (2008) 1 SCC115 (UPSRTC *Vs.* Vinod Kumar)

It was further submitted by the learned advocate for the party no. 1 that the findings of the enquiry officer are based on the materials on record of the enquiry proceedings and not on any extraneous material and such findings cannot be said to be perverse and as serious misconduct of unauthorized absenteeism has been proved against the workman in a properly conducted departmental enquiry, the punishment of dismissal from services imposed against him cannot be said to be shockingly disproportionate, so as to interfere with the same and the workman is not entitled to any relief.

7. In the decision reported in (2008) 1 SCC-115 (Supra) the Hon'ble Apex Court have been pleased to hold that:—

> "A Labour Law-Industrial Disputes Act, 1947-S. 11-A-Interference by Tribunals and courts - Scope - Where the workman removed from service had challenged only the conclusion reached by the enquiry officer and the quantum of punishment but not the legality or fairness of the enquiry proceedings, held labour court could not examine the findings of the enquiry officer and hold that the charge was not proved."

In this case, admittedly the workman has not challenged the legality or fairness of the enquiry proceedings, So, judging the present case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, the findings of the enquiry officer cannot be examined.

> Moreover, on perusal of the materials on record including the documents of the enquiry proceedings, it is found that this is not a case of no evidence or that the findings of the enquiry officer are as such, which could not have been reached by a prudent man on the materials available on record. It is also found that the findings of the enquiry officer are based on the materials on record of the enquiry proceedings. Admittedly, the workman remained absent from duty unauthorisedly. The workman failed to show that he sustained permanent injury and was unable to perform duty in the underground. So, the findings of the enquiry officer cannot be said to be perverse.

8. So far the proportionality of the punishment is concerned, it is found that serious misconduct of unauthrized absence from duty has been proved against

the workman in a properly conducted departmental enquiry. Therefore, the punishment of dismissal from services imposed againt the workman cannot be said to be shockingly disproportionate, calling for any interference. Hence, it is ordered:—

ORDER

The action of the management of Kamptee Sub Area of WCL, Kamptee, Distt. Nagpur in dismissing Sh. Gulchand Maniram, General Mazdoor from services *w.e.f.* 30.09.1999 is proper legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर 2013

का॰आ॰ 2087.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 210/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/557/1999-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2087.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 210/2000 of the Cent. Govt. Indus. Tribubal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 05/09/2013.

[No.L-22012/557/1999-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/210/2000 Date: 22.03.2013

Party No. 1 The Sub Area Manager,
PO: Sillewara, Tah: Saoner,
Distt: Nagpur. (MS)

Versus

Party No. 2 Shri Mathanu Kanojiya,
Chankapur, Qtr. No. 72/1
PO: Sillewara, Tah: Saoner,
Distt. Nagpur.

AWARD

(Dated: 22nd March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of and their workman, Shri Mathanu Zingan Kanojiya, for adjudication, as per letter No. L-22012/557/1999-IR (CM-II) dated 27.07.2000, with the following schedule:—

> "Whether the action of the management of WCL through Personnel Manager, Sillewara Sub Area, PO: Sillewara, Tah: Saoner, Distt. Nagpur in dismissing the services of Shri Mathanu Zingan Kanojiya *w.e.f.* 22.03.99 is justified, legal and proper? If not, to what relief and benefit the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Mathanu Kanojiya, ("the workman" in short) filed the statement of claim and the management of WCL, ("party no. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that on 18.02.1974 he was appointed as a loader with the Party No. 1 and worked continuously without any break and completed 240 days of service in a calendar year and attained the status of permanent employee and during his entire service tenure, there was no adverse remark against him and his service record was clean and unblemished and due to continuous working as a loader, in the year 1995, severe pain on his left side waist region extending up to left foot developed and as such, from 1995, whenever he was suffering from pain in his waist and leg, he used to remain absent, with due permission from the superiors and he never remained absent from duty intentionally or deliberately and on account of severe pain in his waist and joints of left leg, he was unable to attend his duty regularly from 1995 to 1997 and Party No. 1, during the period of his absence, neither issued any notice nor sought any explanation from him, for absenteeism and for the first time on 18.06.1998, the Party No. 1 submitted a charge-sheet against him and sought explanation from him for absenteeism and on 25.06.1998, he submitted his explanation to the charge sheet, giving the details of his sickness and he also requested to absorb his son in service, as he was unable to perform the work of loader, due to severe pain on his waist, but Party No. 1 did not pay any heed to his request and forced him to work as a loader and failed to provide him light work, though such light work was available with Party No. 1.

The further case of the workman is that Party No. 1 levelled false charge of absenteeism against him and initiated the departmental enquiry and in the inquiry, he submitted the details of the period of sickness and produced medical certificate issued by the WCL hospital, but the enquiry officer did not mention about the defence raised by him and the said fact shows that the enquiry officer was not impartial in conducting the enquiry and therefore, the

enquiry was totally illegal and bad in law and the enquiry was not fair and proper and was totally partial and one sided and on the basis of the unfair and improper enquiry, the enquiry officer came to the wrong conclusion that the charges levelled against him were proved and the enquiry report was made without application of mind and after completion of the enquiry, Party No. 1 issued show cause notice and he submitted his reply to the show cause notice, on 18.03.1999 and he also made request to the Party No. 1 to grant him voluntary retirement on account of his sickness, but Party No. 1 did not consider his request and directly issued dismissal order dated 20.3.1999 and the order of dismissal is a major punishment and therefore, the order of dismissal dated 20.03.1999 is required to be quashed and set aside and he is entitled to reinstatement in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the service record of the workman was not clean and unblemished and the claim of the workman that due to working continuously as a loader, severe pain developed in his waist region and left leg is without any basis and the workman did not submit any document to substantiate the allegation and no medical certificate had been filed by the workman along with the application, in support of his claim of illness and absence of the workman from duties is on the records and was an admitted fact even during the enquiry proceedings and the charge-sheet dated 18.06.1998 was submitted against the workman, basing on his absence from duty for the years 1995, 1996 and 1997 and the workman remained absent for 184 days, 156 days and 139 days respectively in 1995, 1996 and 1997 respectively and the departmental enquiry has held on 21.08.1998, 19.091998 and 19.01.1999 and the workman participated in the enquiry and full opportunity was given to the workman basing on the principles of natural justice and the 2nd show cause notice was issued on 17.03.1999 and the workman was dismissed *vide* dismissal order dated 20.03.1999 and the workman was trying to create a fabricated history about the medical sickness, with a motive to declare himself medically unfit for service and to secure employment for his son in his place and there is no provision to provide light job to a workman, unless and until it is supported by a medical certificate of their Medical Officer and the workman in order to cover up the absence, not supported by the treatment undertaken in the company's dispensary, was in habit of producing medical certificates from different private doctors, without producing any prescription or cash memos of medicines and the total period of leave was accepted and was showed on records and there is no provision to provide the work of attendant to the workman and in the enquiry, the charges levelled against the workman was proved and the conclusion of the enquiry officer was accepted by the competent authority and the workman was dismissed from service after following all legal formalities and the reply given by the workman to the second show cause notice was unsatisfactory and there was no provision of VRS and the workman did not produce any evidence before the enquiry officer regarding his sustaining severe pain on waist and leg, as alleged and the workman is not entitled to any relief.

4. It is necessary to mention here that in this case, on 11.09.2002, award had been passed holding the dismissal of the workman to be valid and justified. Against the said award, the workman had approached the Hon'ble High Court of Judicature of Bombay, Nagpur Bench, Nagpur in Writ petition No. 1669/2003 and the Hon'ble High Court by order dated 11.12.2003 had been pleaded to quash and set aside the said award and to remand the case for fresh disposal according to law.

5. It is also necessary to mention here that while the case was fixed for adducing evidence on behalf of the workman regarding the fairness or otherwise of the departmental enquiry, the workman expired, so the legal heirs of the deceased workman, namely, Smt. Sharda, Harkesh and Badri (the widow and two sons of deceased workman respectively) were substituted in his place, on their application, as per order dated 19.07.2011.

6. As this is a case of dismissal of the workman from service after conducting a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 04.03.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principal of natural justice.

It is necessary to mention here that as the legal heirs of the deceased workman did not take part in the reference, order was passed to proceed exparte against them as per orders dated 24.01.2013.

7. At the time of argument, it was submitted by the learned advocate for the Party No. 1 that in this case, by order dated 04.03.2013, the departmental enquiry conducted against the workman has already been held to be valid and in accordance with the principles of natural justice and commission of grave misconduct of unauthorized absence has been proved against the workman in a properly conducted departmental enquiry and the findings of the enquiry officer are based on the materials of the departmental enquiry and a such the findings cannot be said to be perverse and there is no scope for the Tribunal to interfere with the punishment imposed against the workman, in view of the principles enunciated by the Hon'ble Apex Court in catena of cases in that regard and the workman is not entitled to any relief.

8. At this juncture, I think it apropos to mention the principles settled by the Hon'ble Apex court in a string of decisions, regarding the jurisdiction and the power of the Tribunal in regard to interference with the findings and punishment in a departmental enquiry.

It is well settled by the Hon'ble Apex Court that:—

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is *mala fide* is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

It is also settled by the Hon'ble Apex Court that:—

"A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

It is also settled by the Hon'ble Apex Court that:—

"The disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/ and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process."

Now, the present case in hand is to be considered with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above.

9. On perusal of the charge sheet dated 18.06.1998 submitted against the workman, it is found that specific charges under clause 26.24 of the Certified Standing Order was levelled against the workman for remaining habitually absence from duty without sufficient cause.

On perusal of the materials on record including the documents relating to the departmental enquiry held against the workman, it is found that it is not a case of no evidence. It is also found that the findings of enquiry officer are based on the evidence on record of the enquiry and not on any extraneous materials. The enquiry officer has analyzed the evidence on record of the enquiry in a rational manner to arrive at the findings. The findings of the enquiry officer are not as such, which could not have been reached by the prudent man on the said materials and as such, the findings of the enquiry officer cannot to be said to be perverse.

10. So far the proportionality of the punishment is concerned, it is found that grave misconduct of unauthorized absence has been proved against the workman in a properly conducted departmental enquiry. The punishment of discharge from services, therefore, cannot be said to be shockingly disproportionate. So, there is no scope to interfere with the punishment imposed against the workman. Hence, It is ordered:—

ORDER

The action of the management of WCL through Personnel Manager, Sillewara Sub Area, PO: Sillewara, Tah: Saoner, Distt. Nagpur in dismissing the services of Shri Mathanu Zingan Kanojiya *w.e.f.* 22.03.99 is justified, legal and proper. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2088.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 246/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/148/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2088.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 246/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/148/2003-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/246/2003 Date: 20.03.2013

Party No. 1 (a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1 (b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai-400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In Exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Anil Shankarrao Uikey, for adjudication, as per letter No. L-22012/148/2003-IR (CM-II) Dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Anil Shankarrao Uikey, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Anil Shankarrao Uikey ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 18.05.1991 and he was initially engaged through a contractor at Amravati Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of secton 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1991, he was engaged by the Party No. 1 through the contractor for

a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Gaurds and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the manadatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25(H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home Guards and therefor, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble Court, rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and the was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was

the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also provide some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In this cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 1.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No. 1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards Supplied by Singh Security Services from the Bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext. M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350/- due to them towards payments of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Service, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s. Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-Incharge or Security Guard was marking him absent from duty and was reporting the matter to the Shed Incharge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act

and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the Party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No.1 till 14.03.1999 and the Party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the wokman and such facts also prove that the workman was the employee of Party No.1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party no.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the wokman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision

of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the wokman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the sub-mission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of res-rejudicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become wokmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Cout did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted
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> ** ** **
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate Authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No.1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Coporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not poduced any evidence to show that he was directly engaged by the Paty No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court

regarding contract labours, in the decision reported in 1994 II CLR-420 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal empolyer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract, labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representation duly authorised by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workes, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself given rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workman between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of

his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other palce in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to pruduce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12.8.1999 (Cal): C.O. No. 6545 (W) if 1996, D/-9.5.1997 (Cal): W.A. Nos. 345-354 of 1997m D/-17.4.1998 (Kant): W.P. No. 4050 of 1999, D/-2.8.2000 (Bom) and W.P. No. 2616 of 1999, D/-23.12.1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract Labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made thereunder."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand it to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor anything has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourers and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even, if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Section 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2089.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 247/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/149/2003-आईआर(सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2089.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 247/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/149/2003-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/247/2003 Date: 20.03.2013

Party No. 1 (a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1 (b) : The Senor Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai-400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Devidas Bapurao Goyale, for adjudication, as per letter No. L-22012/149/2003-IR (CM-II) Dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Devidas Bapurao Goyale, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Devidas Bapurao Goyale, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.01.1992 and he was initially engaged through a contractor at Amravati Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of secton 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system

in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so-called contractors engaged by the Party No. 1 and Party No. 1 aslo supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.01.1992 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with foodgrains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the managment had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary.The workman has also admitted that the contractor continued them upto 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceedings and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No. 1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX show that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350 due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s. Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-Incharge or Security Guard was marking him absent from duty and was reporting the matter to the Shed In charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.01.1992 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so-called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a Camouflage to deny the legitimate claim of the workman and the so-called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt

that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but in spite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & Ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so-called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and in fact the so-called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so-called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and in spite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Governmnt from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki Vs. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore Vs. S. Mani), Appeal (Civil)- 6511 of 2005 (Surendranagar

District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs*. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and Others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed questions of facts as also other facts which are required to be adjudicated by approporiate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applications are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and the worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities, Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employess of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishement when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment", Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whim this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license isued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. Form the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the prinicpal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the Act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *Vs*. Union of India (1974) I SCC 596, pointed out the object and scope of the Act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs*. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs*. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs*. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees, Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a somke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force emplolyed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in

cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contrained in the Act.

Dharangadhara Chemical Works Ltd. *Vs*. State of Saurashtra (1975-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the conditions as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively, M.A.T. Nos. 1704 and 1705 of 1999, D/- 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997 (Cal): W.A. Nos. 345-354 of 1997, D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/-2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establsihement" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The work "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have drirect relationship with the principal employer as a servant off master. But what is true of a workman could not be correct of contract labour. When the

provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the Union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2090.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 248/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05-09-2013 को प्राप्त हुआ था।

[सं॰ एल-22012/150/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2090.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 248/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05-09-2013.

[No. L-22012/150/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/248/2003 Date: 20.03.2013

Party No. 1(a) : The District Manager, Food Corporation of India, Ajani, Nagpur, Nagpur-440015.

Party No. 1(b) : The Senior Regional Manager, Food Corporation of India, Mistry Bhawan, Dinshaw Wacha Road, Churchgate, Mumbai-400020.

Verses

Party No. 2 : The Secretary, Rashtriya Mazdoor Sena, Hind Nagar Ward No. 2, Near Boudha Vihar, Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Ramesh Kisanrao Natkut, for adjudication, as per letter No. L-22012/150/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Ramesh Kisanrao Natkut, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ramesh Kisanrao Natkut ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.04.1991 and he was initially engaged through a contractor at Amravati Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1991, he was engaged by the Party No. 1 through the contractor for a period after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory

provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to 14.03.1999, without any break in service and the workman did not completed 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No. 1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350/- due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s. Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-Incharge or Security Guard was marking him absent from duty and was reporting the matter to the Shed In charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one months' notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a comouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract

labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact that so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolitions of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for the appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal

(Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surrendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

"In view of the judgement of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others (reported in 2001 (7) SCCI), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

** ** ** **

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engated by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engated by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishmnet being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who

has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2(1)(b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2(1)(c) defines "Contractor" to mean a person who undertakes to proeduce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 required that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contractor labourers is of perential nature. Section 12 enjoins that no contractor to whom that Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative the duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of Sub-Section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirely. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be

absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 1 CLR SC 165=(1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Singh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizer Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated, that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporation in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before that court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". "The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that the should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being

a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957—I—LLJ—477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC—3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not geneuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999(Cal): C.O. No. 6545(W) if 1996, D/-09-5-1997 (Cal): W.A. Nos. 345—354 of 1997 m D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/-2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the act as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties

entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim no any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guard was given by Party No 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 has engaged the workman and others as contract labourers in violation of the provisions of the Contracts Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 25.05.92, Govt. Of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of building owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with repect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a paty in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannout be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2091.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 249/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/151/2003-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2091.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 249/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/151/2003-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/249/2003 Date: 20.03.2013.

Party No. l(a) : The District Manager,
Food Corporation of India,
Ajani,
Nagpur-440015.

Party No. l(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai -400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar, Ward No. 2, Near Boudha Vihar , Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Sukhdeo Sahabdeorao Dhoke, for adjudication, as per letter No. L-22012/151/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Sukhdeo Sahabdeorao Dhoke, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sukhdeo Sahabdeorao Dhoke ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 01.08.1993 and he was initially engaged through a contractor at Amravati Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25- F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No.1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No.1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No.1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No.1 and he was a regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No.1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Govermment decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No.1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No.1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Amravati Depot and the Party No.1 was

supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No.1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No.1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March,1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.08.1993 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No.1 and their attendance was being taken by Party No.1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M -7

bears his signature and Exts. M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No.1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No.1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext. M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350 due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s. Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M- XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-In charge or Security Guard was marking him absent from duty and was reporting the matter to the Shed In charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.08.1993 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the service of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25- F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25- H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so-called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so-called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but in spite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I- CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so-called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so-called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so-called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14-03-1999 to the workman and such facts also prove that the workman was the employee of Party No.1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25- F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and

others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party No. l.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Amravati and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No.1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs. M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other/than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or

occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through con tract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time rescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its

employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd. 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors, As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985- II LLOJ -4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do ..... ". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 -I -LLJ -477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC -3656 (supra) the Honble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the

CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T, Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/-9-5-1997(Cal): W.A. Nos. 345- 354 of 1997m D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ -2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ -23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the party No.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No.1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976,

then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89 /LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No.1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No.1 paid his wages as their employee. It is clear from the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No.1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No.1 and the workman. Hence, there was no question of termination of the services by the Party No.1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर 2013

का॰आ॰ 2092.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 282/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/225/2003-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2092.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 282/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/225/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND. PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/282/2003 Date: 20.03.2013.

Party No. 1 (a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No.l (b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgatye, Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No.2, Near Boudha Vihar ,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub- section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food corporation of India and their workman, Shri Deepak Namdeorao Pandit, for adjudication, as per letter

No. L-22012/225/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Deepak Namdeorao Pandit, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Deepak Namdeorao Pandit, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 21.07.1993 and he was initially engaged through a contractor at Amravati Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No.1 to extract the duties of security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No.1 through the contractor for a period after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No.1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No.1 and he was a regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No.1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No.1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No.1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No.1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No.1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of

violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No.1 and their attendance was being taken by Party No.1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M -7 bears his signature and Exts. M-7 to M-l5 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No.1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No.1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext. M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350 due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and

thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-In charge or Security Guard was marking him absent from duty and was reporting the matter to the Shed In charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25- F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25- H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour but. the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the party No.1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunl by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I- CLR-254 (Statesman Ltd. & Anr. *Vs*. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party No. 1 till. 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03. 1999 to the workman and such facts also prove that the workman was the employee of party no.1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that party No.1 has admitted the claims made

by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party No.1 that the workman was never appointed by party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon 'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the party No.1 that the party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon 'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon 'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference

cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party no.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No.1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon 'bIe Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon 'bIe Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was. the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to , produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work any benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in

accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate Government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be, absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *Vs.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate Government, under Section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal

employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors, As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985- II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 -I -LLJ -477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands , the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC -3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given

result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T, Nos. 1704 and 1705 of 1999, D / -12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D / -9-5-1997(Cal): W.A. Nos. 345- 354 of 1997m D/ -17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ -2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ -23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment "and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the party no.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non- production of the documents by party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No.1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89 /LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence.

The engagement of labor contractor by Party No.1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No.1 paid his wages as their employee. It is clear from the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No.1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No.1 and the workman. Hence, there was no question of termination of the services by the Party No.1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non.joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2093.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 283/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/226/2003-आई आर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2093.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 283/2003) of the Cental Govt. Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/226/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/283/2003 Date: 20.03.2013.

Party No.1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgate, Mumbai - 400020.

Versus

Party No.2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Chandanshiv Shravan Sadanshiv, for adjudication, as per letter No.L- 22012/226/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Chandanshiv Shravan Sadanshiv, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Chandanshiv Shravan Sadanshiv ('the workman" in short), filed the

statement of claim and the management of Food Corporation of India ("Party No.1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 01.05.1993 and he was initially engaged through a contractor at Amravati Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14-03-1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under Section 25- F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No.1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No.1 through the contractor for a period after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was, working under the direct control and supervision of the Party No.1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No.1 and he was a regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No.1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No.1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No.1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was, paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No.1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No.1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No.1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninteruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman, were never utilized by them as employer from 18.05.1991 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has

no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition), Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts. M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No.1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No.1 his cross-examination, this admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M -XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext. M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350/- due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M- XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the

Security Guards by the FCI when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-In-charge or Security Guard was marking him absent from duty and was reporting the matter to the Shed In charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the party no.1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the party No.1 nor the so called contractors engaged by the party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the party No.1 and the party No.1 is the real employer and there was master and servant relationship between the party No.1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though party No.1. unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party no.1 till 14.03.1999 and the party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25- F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O. General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party No.1 that the workman was never appointed by party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so

contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment, for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the party No.1 that the party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the party no.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the party no. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

"In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [reported in 2001 (7) SCC 1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

** ** ** **

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party no.1.

10. In this reference, it is never the case of the workman that he was, directly apppointed or engaged by the party no.1 as a security guard. In the very beginning of the statement of claim it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he as engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the

same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process; operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory, restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplated progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether, the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced, before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....." The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in, the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/-9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ -2-8- 2000 (Born) and W.P. No. 2616 of 1999, D/ -23-12- 1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created

irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour not can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made thereunder."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the party no.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the party no.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by party no.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the party no.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor anything has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the party no.1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No.1.

Moreover, for the sake of argument, even if, it is held that the party no.l had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is. also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The Workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No.1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No.1 paid his wages as their employee. It is clear from the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No.1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No.1 and the workman. Hence, there was no question of termination of the services by the Party No.1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer.

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2094.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 285/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/228/2003-आई आर (सी एम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2094.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 285/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/228/2003 - IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT /NGP /285/2003 Date: 20.03.2013

Party No.1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No.1(b) : The Senior Regional Manager
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai-400020.

Versus

Party No.2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No.2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Ramesh Khushairao Bangar, for adjudication, as per letter No. L-22012/228/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Ramesh Khushairao Bangar, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ramesh Khushairao Bangar ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 01.11.1993 and he was initially engaged through a contractor at Amravati Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No.1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No.1 through the contractor for a period after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but

actually, he was working under the direct control and supervision of the Party No.1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No.1 and he was a .regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No.1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No.1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No.1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so-called contractors engaged by the Party No.1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No.1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home Guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with foodgrains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Govemment abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only, and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman, and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether, the contractor had made arrangement of the requisite number of security guards, as per their requirement and

they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and intially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No. 1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No.1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund, by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext M-XXXI. shows. that Singh Security Services had requested for payment of.Rs. 54,350 due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay lntelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of. Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, Mis Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity, cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-Incharge or Security Guard was marking him absent from duty and was reporting the matter to the Shed Incharge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruptions till 14th March,1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as , contract labour, but the so called contract

was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the party no. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the Union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman ,and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.012.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March; 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon 'bIe High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference-and the Hon'hle High Court while depositing of the said petition have held that. the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'bIe High Court operates as res-judicata between, the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such,

there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006. (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan),

9. First of all, I will take up the submission made by the learned advocate for the Party No.1 that title present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgement of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* national Union water front workers and others (reported in 2001(7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **

In view of the rejection of the main prayer, tile question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court, have held that: —

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable bhy the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punisnment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract. labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal

employer. This court in the case of Gammon India Limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considerng the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

> 6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....." 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or

master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC -3656 (supra) the Hon'bIe Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or, a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus, on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the Contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ -12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17 -4-1998 (Kant): W.P. No. 4050 of 1999, D/ -2-8- 2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999(Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regardjng drawing of adverse inference against the Party No. 1 for non-production of documents

as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No.1.

Moreover, for the sake of arguement, even if, it is held that the party no,1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment. of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No.1 paid his wages as their employee. It is clear from, the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2095.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 286/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/229/2003-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2095.—In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the Award (Ref. 286/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05-09-2013.

[No. L-22012/229/2003-IR (CM-II)]

B. M. PATNAIK, Desh Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

CASE NO. CGIT/NGP/286/2003 DATE: 20.03.2013

Party No. 1 (a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1 (b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai-400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Shirila Pundlikrao Guldoekar, for adjudication, as per letter No. L-22012/229/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Shirila Pundlikrao Guldoekar, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Shirila Pundlikrao Guldoekar ("the workman" is short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 18.05.1993 and he was initially engaged through a contractor at Amravati Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management,

with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninteruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home Guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home Guards and Police Personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as Torch, Lathi, Whistle and Uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman is support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no

advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13-12-1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No. 1. In his examination in chief which is on affidavit, this witness has reiternated the facts mentioned in the written statement by Party No. 1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15-06-1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext. M- XXXI shows that Singh Security Services had requested for payment of Rs. 54,350 due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18-05-1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-1992 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other buildings to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and indentity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-In charge or Security Guard was marking him absent from duty and was reporting the matter to the Shed In charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18-05-1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one months' wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under this direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01-11-1990 abolished the employment of contract labour and directed to give employment to contract labour engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15-06-2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employees of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30-05-2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31-12-1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman contrinued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR- 402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR 826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O. General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that party No 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatment in service with continuity and full backe wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999 , the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur

Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others (reported in 2001(7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to the adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** **

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2(1)(b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2(1)(c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and

includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165 = (1985) I SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the

government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are intially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the terms as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has been provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2)

of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/- 12-8-1999 (Cal.): C.O. No. 6545(W) if 1996, D/-9-5-1997 (Cal.): W.A. Nos. 345-354 of 1997m D/-17-4-1998 (Kant.): W.P. No. 4050 of 1999, D/-2-8-2000 (Bom.) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom.), 1998 Lab IC 2571 (Cal.), Reserved.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is createrd between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made thereunder.

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-

examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if , it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.1992, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid this wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the cirucmstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So, the contractor, who had engaged by workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2096.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 296/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2013 को प्राप्त हुआ था।

[सं॰ एल-22012/239/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2096.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 296/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05.09.2013.

[No. L-22012/239/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/296/2003

Date: 20.03.2013

Party No. 1(a) : The District Manager,
Food Corporation of India, Ajani, Nagpur, Nagpur-440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India, Mistry Bhawan, Dinshaw Wacha Road, Churchgate, Mumbai-400020.

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar Ward No. 2, Near Boudha Vihar, Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Pramod Bramhaji Mohod, for adjudication, as per letter No. L-22012/239/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Pramod Bramhaji Mohod, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Pramod Bramhaji Mohod ('the workman' in short), filed the statement of claim and the management of Food Corporation of India ("Part No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.10.1993 and he was initially engaged through a contractor at Amravati Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the

procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefor, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefor, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts. M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No. 1. In his examination in cheif, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of

the same by FCI to the contractor for deposit and Ext. M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350 due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s. Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-Incharge or Security Guard was marking him absent from duty and was reporting the matter to the Shed Incharge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so-called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30-05-2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & Ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so-called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and in fact the so-called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman

and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submission, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home Guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S Mani), Appeal (Civil) 6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and Others *Vs.* National Union Water front Workers and Others (reported in 2001 (7) SCCI), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb their cannot be granted.
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In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the

petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grivevances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on meritand granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate fo the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from thebenefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-emamination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropose to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-IILLJ-4 (S.C.) (The workman of the Food Corporation of IndiaVs. M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and other *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-40-2 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working there in was the employees of such employer. But slowly the employer including Central and State Governments started entrucsting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumistances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relatlion to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of Section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment." sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour

except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *Vs.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to intrduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to all together, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers Association *Vs.* Union of India, 19851 I CLR SC 165=(1985) I SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its aboilition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs.* India Oil Corporation Ltd. 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act have two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the terms as contained in the Act.
>
> Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1757 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
>
> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute

brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/- 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/- 9-5-1997 (Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is

also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 of compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above the applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2097.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 297/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/240/2003-आईआर (सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2097.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 297/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/240/2003-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/297/2003 Date: 20.03.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai-400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hindi Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Deelip Trambakrao Jadhav, for adjudication, as per letter No. L-22012/240/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Deelip Trambakrao Jadhav, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Deelip Trambakrao Jadhav ("the workman" in short), filed the

statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.05.1993 and he was initially engaged through a contractor at Amravati Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a comouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolision) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no.1 is that for the relief as claimed by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contract given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not pled any document showing that they had worked for 240 days in each your and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially he had appointed by Singh Security Services and contractor had appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No. 1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Sucurity Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext. M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350/- due to them towares payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s. Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other

Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-In charge or Security Guard was marking him absent from duty and was reporting the matter to the Shed in charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman nad the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12/1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-829 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union represenrtative for the workman that Party No. 1 has admitted the claims made by the workman and has been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed

by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicate, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petitio no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and other claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench is Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed questions of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1. as a security guard. In the very beginning of the statement of claim, it has been mentioned by the

workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on papar." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the sepecific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and Others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the

contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *Vs.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be

established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....", "The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
>
> Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment

by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12.8.1999 (Cal): C.O. No. 6545(W) if 1996, D/-9.5.1997 (Cal): W.A. Nos. 345-354 of 1997m D/- 17.4.1998 (Kant): W.P. No. 4050 of 1999, D/- 2.8.2000 (Bom) and W.P. No. 2616 of 1999, D/- 23.12.1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made thereunder."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the party No.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1, had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to be workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative,

with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का॰आ॰ 2098.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 298/ 2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05-09-2013 को प्राप्त हुआ था।

[सं॰ एल-22012/241/2003-आईआर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2098.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 298/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05-09-2013.

[No. L-22012/241/2003-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND. PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/298/2003 Date: 20.03.2013.

Party No.1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No.1 (b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgate,
Mumbai-400020.

Versus

Party No.2 : The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar Ward No.2,
Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M. S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Anil Rangrao Thakare, for adjudication, as per letter No.L- 22012/241/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Anil Rangrao Thakare, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Anil Rangrao Thakare ('the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No.1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 01.10.1993 and he was initially engaged through a contractor at Amravati Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No.1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No.1 through the contractor for a period after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and

he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No.1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No.1 and he was a .regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No.1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No.1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No.1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No.1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No.1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No.1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee

appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initally appointed them and the document Ext. M-7 bears his signature and Exts M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature, under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to the them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Part No. 1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext. M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350 due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within the period from 1991 to 1999, three contractors were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s. Chaitainya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dustring and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the securit duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-In charge or Security Guard was marking him absent from duty and was reporting the matter to the Shed In-charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the part no. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuinue and the Central Government by

notification dated 1.11.1990 abolsihed the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contract did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contrac, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore

Vs. S Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicate, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the Judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [(reported in 2001) (7) SCCI], the relief sought by the petitioners cannot be granted sine the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitions approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principle of res-judicate. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." the case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In this evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decicion reported in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

2. With the Industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in

which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolitition in certain circumstances and for matters connected therewith.

3. The "Contract labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any officer or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into considerations is whether the work performed by the contract labourer is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employer by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be trated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working

conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of eseential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association Vs. Union of India, 1985 I CLR SC 165=(1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh Vs. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath Vs. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the

workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Section 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1977 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/- 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W. P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the term "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the term "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made thereunder."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the party no.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no

need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor anything has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No. 1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the wokman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have not clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2013

का॰आ॰ 2099.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 26/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/09/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/15/2009-आईआर (सीएम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 4th September, 2013

S.O. 2099.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Indistrial dispute between the management of Ghugus Sub Area of Western Coalfields Limited, and their workmen, received by the Central Government on 04/09/2013.

[No. L-22012/15/2009-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/26/2009

Date: 18.06.2013

Party No.1 : The Sub Area Manager,
Ghugus Sub Area of WCL,
Post Ghugus Colliery,
Chandrapur (M.S.)-442505.

Party No. 2 : The President,
Sanyukta Khadan Mazdoor Sangh,
(AITUC), Ghugus Br. Qtr. No. 223,
WCL Colony, Ram Nagar,
PO: Ghugus, Chandrapur (MS).

AWARD

(Dated: 18th June, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Surajpal Jagmohan, for adjudication, as per letter No. L No.L-22012/15/2009-IR (CM-II) dated 28.7.2009, with the following schedule:—

> "Whether the action of the management in respect of their Ghugus O/C Mines of Wani Area in converting Shri Surajpal Jagmohan from higher to lower category and subsequently recovering his already paid dues from his salary is legal and justified? To what relief is the workman concerned entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Surajpal Jagmohan, ("the workman" in short), filed the statement of claim and the management of WCL, ("Party No.1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that he was appointed as a Tub loader w.e.f. 11.11.1974 and worked in the underground as a loader in Nakoda Incline of Ghugus colliery and during the periodical Medical examination as required under the Mines Act and Rules made thereunder, he was directed to appear before the Medical Board on 17.06.1996 for his medical examination and after his medical examination, the Medical Board recommended his name for alternate light work on surface, finding him unfit to do his original work of Tub loader in the underground and though he was entitled for protection of his wages, the party no.1 after deputing him for light work, reduced his basic wages in violation of the provisions of law and placed him in the lowest time rated category of NCWA. It is further pleaded by the workman that at the initial stage of his performing light job, he was paid the basic wages of his original job, so he was confident that his wages would be protected, but at the time of implementation of NCWA-VII in the year 2006, the party no.1 deducted a sum of Rs. 1,77,280/- from the arrears of pay, on the ground of payment of excess basic pay, consequent upon his conversion from piece-rated to time rated and due to non-protection of his basic wages, he sustained recurring loss of Rs. 8000/- to Rs. 10,000/- per month and his conversion from piece-rated to time-rated was as per administrative order issued by party no.1 and he had never opted for his conversion from piece-rated to time rated worker and due to administrative exigencies as mentioned above, he was transferred by party no. l from Nakoda incline to Ghugus OC Mine as per office order dated 27.08.1998 and there was a bipartite settlement between the party no.1 and the recognized union before the Regional Labour Commissioner, Nagpur on 02.11.1992 for protection of the basic wages of loaders, on their conversion from piece-rated to time-rated and inspite of such settlement, the party no.1 did not protect his basic wages and though such pay protection was given to number of loaders on their conversion from piece-rated to time- rated, he was given discriminating treatment by party no.1 and deduction of his wages is illegal and arbitrary and he is entitled for protection of his wages, consequent upon his conversion from piece-rated to time-rated and to get refund of the amount of Rs. 1,77,280, which was illegally deducted from his arrears with interest there on.

3. The party no.1 in the written statement has pleaded *inter-alia* that the case filed by the workman is false, fabricated, frivolous and not maintainable in the eye of law and the workman has suppressed the material facts and has not approached the Tribunal with clean hands and as such, the reference is liable to be rejected. It is further pleaded by the party no.1 that the workman was working as a piece-rated worker in Nakoda incline and on the written request of the workman and in the year 1996, light job was given to him for 15 days on humanitarian ground and therefore, his wage was not reduced for the said period and Nakoda Mine was due to close in the year 1998, so the workman was transferred to Ghugus Open Cast Mine with his voluntary consent and wage was fixed on midpoint basis, as per the guide line provided in the settlement dated 31.10.1995, between the recognized union and the party no.1 and the designation and wages are different in underground mine and open cast mine and party no.1 had properly followed the Rules and Law of equal pay for equal work and had paid the workman his legitimate wages for the work done in time-rated and piece-rated category respectively and the workman retired from services on

30.06.2008 and providing of alternate job to him in Ghugus open cast mine was not on the recommendation of Medical Board, but his transfer from Nakoda incline to Ghugus open cast mine and conversion was due to closure of Nakoda mine in the year 1998 and the workman gave his consent voluntarily to work as General Mazdoor category-I in Ghugus open cast mine and accordingly, the workman alongwith 230 other time rated workmen was re-designated/ converted as General Mazdoor cat.1 vide office order dated 02.07.1999 and his wage was not protected as he was not entitled for the same, as per the settlement dated 03.10.1995 and his wage was re-fixed on the midpoint basis as per the said term of settlement and the sum of Rs. 1,77,280 was deducted from his arrears of pay revision, as excess amount was paid to him and the settlement dated 02.11.1992 is not applicable in the present case, as the workman was converted to time rated category in the year 1998 and by that time, the bipartite settlement dated 31.10.1995 was already in force and there was no discriminating treatment to the workman and the workman is not entitled for any relief.

4. In support of his claim, the workman has examined himself as a witness. It is to be mentioned here that except examining himself the workman has not produced any other evidence. On the other hand, the party no.1 has relied on the documents filed by it and has not adduced any oral evidence. It is also necessary to mention that the case was fixed to 07.05.2013 for argument, but none appeared on behalf of the management, so argument was heard from the side of the workman and the case was posted for award.

5. At the time of argument, the learned advocate for the workman reiterated the facts mentioned in the statement of claim and submitted that the workman is entitled for the reliefs as claimed.

6. Perused the record including the pleadings of the parties, the oral evidence of the workman and the documents produced by the management. As the workman has not produced any document in support of his claim that he was examined by the medical Board of party no.1 on 17.06.1996 and the Medical Board found him unfit to work in the underground and therefore, recommended to give him alternate light job on surface, his oral evidence in that respect cannot be held to be sufficient to come to the conclusion that on medical ground, the workman was given alternate job on surface. Moreover, the workman in his cross-examination has categorically admitted that he was transferred to Ghugus Open Cast Colliery, as Nakoda colliery was closed.

7. On perusal of the documents produced by the party no.1 and the other materials on record, it is found that the workman was transferred to Ghugus Open Cast Colliery from Nakoda Incline due to closure of Nakoda Incline and he was converted to daily rated workman from piece rated workman alongwith 229 other workmen, as per order dated 02.07.1999. It is also found that the workman submitted a joining letter on 10.09.1998 at Ghugus open cast colliery and he also signed a consent letter to work voluntarily as a general mazdoor category-I at Ghugus open cast colliery.

8. The party no.1 has claimed that in view of the settlement between it and the recognized union dated 31.10.1995, the workman was not entitled for protection of his wages and according to the provisions of the said settlement, his wages was re-fixed on the midpoint of the commensurate category.

9. In view of the admitted facts as already mentioned above, now, it is only to be considered as to whether the workman was not entitled for protection of his basic pay of piece rated loader in view of the settlement dated 31.10.1995.

On perusal of the so-called settlement dated 31.10.1995, it is found that the same is not a settlement at all, but the same is the record note of discussion held between the management of WCL and RKKMS union on 31.10.1995 at Nagpur. Moreover, judicial notice is necessary to be taken that there are five major unions including RKKMS in the coal industry including WCL, with whom, negotiations and settlements are being made by the coal industry. So, any settlement arrived at by the management of WCL with only the RKKMS union cannot bind all the employees of WCL. There is no evidence on record to show that the workman is a member of RKKMS union. There is also no pleading on behalf of the party no.1 that the workman is a member of RKKMS union and he is bound by the so called settlement dated 31.10.1995 or that though the said settlement was with RKKMS union, the same was applicable to all the employees of WCL. As the so-called settlement dated 31.10.1995 in fact is not a settlement in the true sense, it is held that the same is not binding on the workmen.

Moreover, there is also provision in clause 5 of the said settlement about protection of pay of piece rated workers. Clause 5 of the said settlement reads as follows:—

> "Such piece-rated workmen who may be put in time-rated/monthly rated in future by managerial decisions *i.e.* without, seeking option for time-rated/monthly-rated or without going through the selection process against internal notification for time-rated/monthly-rated, will continue to get protection of piece-rated wages. Such piece rated workmen who come to TR as per option given by them will not get this benefit."

On examination of the case of the workmen with the provisions of the aforesaid clause 5, it is found that the transfer and conversion of the workman as time-rated workman from piece-rated worker was due to closure of Nakoda Incline. The consent letter taken from the workman to work as General Mazdoor category-I was taken after such conversion. Hence, the putting of the workman in

time rated is held to be by way of managerial decision. Therefore, the workman is entitled for protection of his basic pay of piece-rated loader. As it is held that the workman is entitled for protection of his wages, the recovery of Rs. 1,77,280 from his arrears of pay revision is not legal and the action of Party No. 1 in that respect cannot be sustained. Hence, it is ordered:—

ORDER

The action of the management in relation to their Ghugus open cast mines in recovering the sum of Rs. 1,77,280 from the arrears of pay of the workman, Shri Surajpal Jagmohan is illegal and unjustified. The workman is entitled for protection of his wages of piece rated worker from the date of his conversion to time rated worker till the date of his retirement and all consequential benefits. The workman is also entitled for refund of Rs. 1,77,280. The Party No. 1 is directed to comply with the directions within 30 days of the notification in the official gazette.

J.P. CHAND, Presiding Officer

नई दिल्ली, 13 सितम्बर, 2013

का॰आ॰ 2100.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) का धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अक्तूबर, 2013 को उस तारीख के रूप में नीयत करती है, जिनको उक्त अधिनियम के [अध्याय-4(44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 (धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध राजस्थान राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:—

क्रम सं॰	विवरण	तहसील का नाम	जिला
1.	**जिला चित्तौड़गढ़ तहसील चित्तौड़गढ़ के निम्नांकित राजस्व ग्राम के अन्तर्गत आने वाले क्षेत्र:—** (1) बामनिया (2) मायरा (3) गिलूण्ड (4) घटीयावली (5) सेमलीया (6) सावा की ढाणी (7) नया खेरा (8) नीम का अमराना (9) रेल का अमराना (10) अमरपुरा (11) विलायती खेड़ा (12) चौथ पुरा (13) बिलोड़ा (14) पंचतोली (15) सामरी (16) शभ्भुपुरा (17) अरनीयापंथ (18) जालमपुरा (19) ओरड़ी (20) ओछड़ी (21) केशरपुरा (22) मेड़ी का अमराना (23) सावा (24) जाफरखेरा (25) भाटियों का खेड़ा (26) फलासीया (27) पाटनीया (28) मीणो का कन्थारीया (29) बनेष्टी (30) बिलोदा (31) चीकसी 32) (बड़ का अमराना (33) सींदवडी (34) माताजी का ओरड़ी (35) खोर 36) रूगनाथपुरा 37) रामा खेड़ा	**चित्तौड़गढ़**	**चित्तौड़गढ़**
2.	**जिला चित्तौड़गढ़ तहसील निम्बाहेड़ा के निम्नांकित राजस्व ग्राम के अन्तर्गत आने वाले क्षेत्र:—** (1) रामपुरा (2) दलमगरी (3) पायरी (4) मांगरोल (5) भावलीया (6) रावलीया (7) संतखड़ा (8) सांड (9) टाई (10) टाई का खेरा (11) सीगडीया (12) फाचर सॉलकी (13) सॅरथल (14) ऊखनिया (15) फाचरअहीरान (16) बोराखेड़ी (17) सांगरिया (18) पीरखेड़ा (19) सीतारामजी का खेड़ा (20) भट्टकोटड़ी (21) कन्थारीया	**निम्बाहेड़ा**	**चित्तौड़गढ़**
3.	**जिला चित्तौड़गढ़ तहसील भदेसर के निम्नांकित राजस्व ग्राम के अन्तर्गत आने वाले क्षेत्र:—** 1) कन्नौज	**भदेसर**	**चित्तौड़गढ़**

[सं॰ एस-38013/56/2013-एस एस-I]

जार्जकुटी टी॰ एल॰, अवर सचिव

New Delhi, the 13th September, 2013

S.O. 2100.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2013 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Rajasthan namely:—

Sl. No.	Particular	Tehsil	District
1.	**The Following Revenue Villages falling within the limit of Chittorgarh Tehsil, Distt-Chittorgarh** (1) Bamniya (2) Mayra (3) Giloond (4) Gatawayali (5) Semaliya (6) Sawa ki Dhani (7) Naya Khera (8) Neem ka Amarana (9) Rail ka Amarana (10) Amarpura (11) Bilayati Khera (12) Chauthpura (13) Bilora (14) Panchtoli (15) Samari (16) Shambhupura (17) Araniyapanth (18) Jalampura (19) Oradi (20) Ochadi (21) Kesarpura (22) Medi ka Amarana (23) Sawa (24) Jhapar Khera (25) Bhatiyo ka Khera (26) Phalisiya (27) Pataniya (28) Meeno ka Kanthariya (29) Banasti (30) Biloda (31) Chikasi (32) Bar ka Amarana (33) Sindwadi (34) Mataji ki Odi (35) Khor (36) Rugnathpura (37) Rama Khera	Chittorgarh	Chittorgarh
2.	**The Following Revenue Villages falling within the limit of Nimbahera Tehsil, Distt-Chittorgarh** (1) Rampura (2) Dalmagri (3) Payari (4) Mangrol (5) Bhawalia (6) Rawalia (7) Satkhanda (8) Sand (9) Tai (10) Tai ka Khera (11) Sigdiya (12) Phachar Solanki (13) Sarthal (14) Ukhaniya (15) Fachar Ahiran (16) Borakhedi (17) Sangriya (18) Peerkheda (19) Sitaramji ka Kheda (20) Bhattkotdi (21) Kanthariya	Nimbahera	Chittorgarh
3.	**The Following Revenue Villages falling within the limit of Bhadeshar Tehsil, Distt-Chittorgarh** (1) Kannoj	Bhadeshar	Chittorgarh

[No. S-38013/56/2013-SS-I]

GEORGEKUTTY T. L., Under Secy.

नई दिल्ली 13 सितम्बर, 2013

का॰आ॰ 2101.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अक्तूबर, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा 76 की उप-धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:—

केन्द्र	क्षेत्र के अंतर्गत आने वाले निम्न राजस्व गांव
कोडैक्कानल, कोडैक्कानल तालुक, दिंडुक्कल जिला	दिंडुक्कल जिला में कोडैक्कानल तालुक के सीमा में शामिल होने वाले 1. कोडैक्कानल नगर पालिका तथा राजस्व गांव 2. विलपट्टी 3. पूलत्तूर 4. मन्नवणूर 5. कूक्कल 6. पूम्बारै 7. वेल्लकवि 8. अडुक्कम 9. पन्नैकांडु

[सं॰ एस-38013/57/2013-एस एस-I]

जार्जकुटी टी॰ एल॰, अवर सचिव

New Delhi the 13th September, 2013

S.O. 2101.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2013 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil Nadu namely:—

Centre	Area Comprising the Revenue Villages of
Kodaikanal, Kodaikanal Taluk Dindigul District	1. Kodaikanal Municipal Limit 2. Vilpatti 3. Poolathur 4. Mannavanur 5. Kookal 6 Poomparai 7. Vellagavi 8. Adukkam 9. Pannaikadu

[No. S-38013/57/2013-SS-I]

GEORGE KUTTY T. L., Under Secy.

नई दिल्ली 13 सितम्बर, 2013

का॰आ॰ 2102.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अक्तूबर, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:—

राजगीर

क्रम सं॰	(मौजा का नाम) राजस्व ग्राम का नाम	थाना संख्या	जिला
1.	पथरौरा	480	नालंदा
2.	मंजैठा	418	नालंदा
3.	चन्दौरा	417	नालंदा
4.	कहटा	419	नालंदा
5.	वसुएम	477	नालंदा
6.	बडहरी	481	नालंदा
7.	नोन्ही	478	नालंदा
8.	नाहुब	476	नालंदा
9.	सीमा	469	नालंदा
10.	बेलोवा	470	नालंदा
11.	हसनपुर	473	नालंदा
12.	झालर	471	नालंदा
13.	चकरसूल	479	नालंदा
14.	महादेवपुर	483	नालंदा
15.	बरनौसा	492	नालंदा
16.	गोवडीहा	499	नालंदा
17.	मौलानाडीह	494	नालंदा
18.	मियाँविगहा	495	नालंदा
19.	बहेडा	412	नालंदा
20.	तेतरिया	411	नालंदा
21.	बनौली	493	नालंदा
22.	भूई	407	नालंदा
23.	मिल्की	416	नालंदा
24.	खेरासलारू	415	नालंदा
25.	चकभूई	414	नालंदा
26.	गोरौर	502	नालंदा
27.	कटारी	501	नालंदा
28.	खैराचमन	496	नालंदा
29.	जमालपुर खर	498	नालंदा
30.	करीमपुर	497	नालंदा
31.	रटना	503	नालंदा
32.	छबिलापुर	505	नालंदा
33.	अण्डवस	506	नालंदा
34.	लोदीपुर	507	नालंदा
35.	दोगी	504	नालंदा
36.	कतलपुरा	508	नालंदा
37.	मालीसाढ़	509	नालंदा
38.	पिलखी	484	नालंदा
39.	नेकपुर	486	नालंदा
40.	ढेरा	489	नालंदा
41.	महुअल्ला	487	नालंदा
42.	नीमा	488	नालंदा
43.	मेयार	491	नालंदा
44.	बढ़ौना	500	नालंदा
45.	मेरा	491	नालंदा
46.	दरियापुर	474	नालंदा
47.	लहुआर	461	नालंदा
48.	विरचैत	462	नालंदा
49.	राजगीर	485	नालंदा
50.	पंडितपुर	475	नालंदा
51.	रसलपुर	460	नालंदा
52.	सौरई	472	नालंदा
53.	मटिहानी	482	नालंदा

[सं॰ एस-38013/58/2013-एस एस-I]

जार्जकुटी टी॰ एल॰, अवर सचिव

New Delhi, the 13th September, 2013

S.O. 2102.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2013 as the date on which the provisions of Chapter V (except Sections 44 and 45 which have already been brought into force) and Chapter V andVI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Bihar namely:—

RAJGIR

Sl.	Name of the Revenue Village	Revenue P.S. No.	District
1.	Pathroura	480	Nalanda
2.	Manjaitha	418	Nalanda
3.	Chandoura	417	Nalanda
4.	Katha	419	Nalanda
5.	Vasuam	477	Nalanda
6.	Barhari	481	Nalanda
7.	Nonhi	478	Nalanda
8.	Nahub	476	Nalanda
9.	Seema	469	Nalanda
10.	Belova	470	Nalanda
11.	Hasanpur	473	Nalanda
12.	Jhalar	471	Nalanda
13.	Chakarsool	479	Nalanda
14.	Mahadeopur	483	Nalanda
15.	Barnousa	492	Nalanda
16.	Govdeeha	499	Nalanda
17.	Moulanadeeh	494	Nalanda
18.	Miyavigaha	495	Nalanda
19.	Bahera	412	Nalanda
20.	Tetariya	411	Nalanda
21.	Banouli	493	Nalanda
22.	Bhooi	407	Nalanda
23.	Milki	416	Nalanda
24.	Kherasalaru	415	Nalanda
25.	Chakbhooi	414	Nalanda
26.	Gorour	502	Nalanda
27.	Katari	501	Nalanda
28.	Khairachaman	496	Nalanda
29.	Jamalpur Khar	498	Nalanda
30.	Karimpur	497	Nalanda
31.	Ratna	503	Nalanda
32.	Chhabilapur	505	Nalanda
33.	Andavas	506	Nalanda
34.	Lodipur	507	Nalanda
35.	Dogi	504	Nalanda
36.	Katalpura	508	Nalanda
37.	Malisardh	509	Nalanda
38.	Pilkhee	484	Nalanda
39.	Nekpur	486	Nalanda
40.	Dhera	489	Nalanda
41.	Mahualla	487	Nalanda
42.	Neema	488	Nalanda
43.	Meyar	491	Nalanda
44.	Bedhouna	500	Nalanda
45.	Mora	491	Nalanda
46.	Dariyapur	474	Nalanda
47.	Lahuar	461	Nalanda
48.	Virchait	462	Nalanda
49.	Rajgir	485	Nalanda
50.	Panditpur	475	Nalanda
51.	Rasalpur	460	Nalanda
52.	Sourai	472	Nalanda
53.	Matihani	482	Nalanda

[No. S-38013/58/2013-SS-I]

GEORGEKUTTY T. L., Under Secy.

नई दिल्ली, 17 सितम्बर, 2013

का॰आ॰ 2103.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप–धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अक्तूबर, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

केन्द्र	क्षेत्र के अंतर्गत आने वाले निम्न राजस्व गांव
वलापाडी, व करिपट्टी वलापाडी तालुक सेलम जिला	10. चिन्नागौंडापुरम
	11. करिपट्टी
	12. मेट्टुपट्टी
	13. सेषणचावडी
	14. करूमापुरम
	15. मुतमपट्टी

केन्द्र	क्षेत्र के अंतर्गत आने वाले निम्न राजस्व गांव	
	16.	मिन्नामपल्ली
	17.	वलापाडी
	18.	पेरूमपालायम
	19.	अयोध्यापट्टनम
	20.	सेन्रायमपालयम

[सं. एस-38013/59/2013-एस एस-I]

जार्जकुटी टी॰ एल॰, अवर सचिव

New Delhi, the 17th September, 2013

S.O. 2103.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2013 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil-Nadu namely:—

Centre		Area Comprising the Revenue Villages
Vazhapadi & Karipatti	1.	Chinnagoundapuram
in Vazhapadi Taluk	2.	Karipatti
Salem District	3.	Mettupatti
	4.	Seshanchavadi
	5.	Karumapuram
	6.	Muthampatti
	7.	Minnampalli
	8.	Vazhapadi
	9.	Perumapalayam
	10.	Ayothiapattanam
	11.	Senrayampalayam

[No. S-38013/59/2013-SS-I]

GEORGEKUTTY T. L., Under Secy.

नई दिल्ली, 17 सितम्बर, 2013

का॰आ॰ 2104.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप धारा (3) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अक्तूबर, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध कर्नाटक राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्र॰ सं॰	राजस्व ग्राम का नाम	होबली	तालुक	जिला
1.	केंपनायकन हल्ली	जीगनी	आनेकल	बैंगलूर
2.	बन्नेरधट्टा विलेज	जीगनी	आनेकल	बैंगलूर
3.	जन्गू पाल्या	जीगनी	आनेकल	बैंगलूर
4.	हुलिंमगला	जीगनी	आनेकल	बैंगलूर
5.	कोप्पा विलेज	जीगनी	आनेकल	बैंगलूर
6.	चूड़सन्द्रा	सर्जापूरा	आनेकल	बैंगलूर
7.	सकलपूरा	जीगनी	आनेकल	बैंगलूर
8.	हुल्ल हल्ली	जीगनी	आनेकल	बैंगलूर
9.	मुत्तानल्लूर	जीगनी	आनेकल	बैंगलूर
10.	हेन्नगरा	जीगनी	आनेकल	बैंगलूर

[सं. एस-38013/60/2013-एस एस-I]

जार्जकुटी टी॰ एल॰, अवर सचिव

New Delhi, the 17th September, 2013

S.O. 2104.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2013 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Karnataka namely:—

Sl. No.	Name of the Rev. Village or Municipal Limits	Hobli	Taluk	District
1.	Kempanayakanahalli	Jigani	Annekal	Bangalore
2.	Banneragatta Village	Jigani	Annekal	Bangalore
3.	Jangu Palya	Jigani	Annekal	Bangalore
4.	Hulimangala	Jigani	Annekal	Bangalore
5.	Koppa Villege	Jigani	Annekal	Bangalore
6.	Choodasandra	Sarjapura	Annekal	Bangalore
7.	Sakalpura	Jigani	Annekal	Bangalore
8.	Hullahalli	Jigani	Annekal	Bangalore
9.	Muthanallur	Jigani	Annekal	Bangalore
10.	Hennagara	Jigani	Annekal	Bangalore

[No. S-38013/60/2013-SS-I]

GEORGEKUTTY T. L., Under Secy.

नई दिल्ली, 17 सितम्बर, 2013

का॰आ॰ 2105.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अक्तूबर 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:—

''आंध्र प्रदेश राज्य के नलगोण्डा जिले के वेमुलपल्लि मण्डल में सेट्टीपालेम के राजस्व गांव।''

[सं॰ एस-38013/61/2013-एसएस-I]

जार्जकुटी टी॰ एल॰, अवर सचिव

New Delhi, the 17th September, 2013

S.O. 2105.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2013, as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely:—

"The Revenue village of Settipalem of Vemulapally Mandal in Nalgonda district of Andhra Pradesh."

[No. S-38013/61/2013-SS-I]

GEORGEKUTTY T. L., Under Secy.

नई दिल्ली, 19 सितम्बर, 2013

का॰आ॰ 2106.—भारतीय रेल अधिनियम, 1989 (1989 का 24) की धारा 136 के अंतर्गत रेलवे कर्मचारी (कार्य के घण्टे तथा विश्राम की अवधि) नियमावली, 2005 के नियम 4(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा श्रम एवं रोजगार मंत्रालय में संयुक्त सचिव श्री ए॰सी॰ पाण्डेय को उक्त नियमों के अंतर्गत अपीलों की सुनवाई करने हेतु अपीलीय प्राधिकारी अधिसूचित करती है। सरकारी राजपत्र में इसके प्रकाशन की तारीख से यह प्रभावी होगा।

[फा॰ सं॰ जेड-20025/06/2006-सीएलएस-I]

बाबू चेरियन, उप-सचिव

New Delhi, the 19th September, 2013

S.O. 2106.—In exercise of the powers conferred by Rule 4(2) of Railway Servants (Hours of Work and Period of Rest) Rules, 2005 under Section 136 of the Indian Railways Act, 1989 (24 of 1989), the Central Government hereby notifies Shri A. C. Pandey, Joint Secretary in the Ministry of Labour & Employment as the Appellate Authority to hear Appeals under the said Rules. This will take effect from the date of its publication in the Official Gazette.

[F.No. Z-20025/06/2006-CLS-I]

BABU CHERIAN, Dy. Secy.

नई दिल्ली, 24 सितम्बर, 2013

का॰आ॰ 2107.—केन्द्रीय सरकार संतुष्ट है कि लोकहित में ऐसा करना अपेक्षित है कि रक्षा प्रतिष्ठान में सेवाओं को जिसे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 8 के अन्तर्गत निर्दिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवाएं घोषित किया जाना चाहिए।

अत: अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उपखंड (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छ: मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. सं॰ एस-11017/8/2011-आईआर (पीएल)]

ए. सी. पाण्डेय, संयुक्त सचिव

New Delhi, the 24th September, 2013

S.O. 2107.—Whereas the Central Government is satisfied that the public interest requires that the services in the 'Defence establishments' which is covered by item 8 of the First Schedule to the Industiral Disputes Act, 1947 (14 of 1947), should be declared to be a 'Public Utility Service' for the purposes of the said Act.

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares with immediate effect the said industry to be a 'Public Utility Service' for the purpose of the said Act for a period of six months.

[No. S-11017/8/2011-IR(PL)]

A.C. PANDEY, Jt. Secy.

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