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इस 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)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 13 मार्च, 2020

का. आ. 377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोरपोरेशन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 12/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2020 को प्राप्त हुआ था।

[सं. एल-12011/21/2019-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th March, 2020

S.O. 377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Corporation Bank, and their workmen, received by the Central Government on 13.03.2020.

[No. L-12011/21/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 06TH MARCH 2020PRESENT : **JUSTICE SMT. RATNAKALA**, Presiding Officer**CR 12/2019****I Party**

The General Secretary,
Corporation Bank Employees Union,
CBEU, Golden Jubilee Hall,
Opp. Sharda Vidyalaya,
PVS Kala Kunj Road,
Kodialbali,
Mangalore - 575003.

II Party

The General Manager,
Corporation Bank,
Human Resource Management Division,
Head Office, Mangaladevi Temple Road,
Mangalore - 575001.

Appearance :

Authorised Representative for I Party : Mr. M. Rama Rao

Advocate for II Party : Mr. Pradeep S. Sawkar

AWARD

The Central Government vide Order No. L-12011/21/2019-IR(B-II) dated 25.07.2019 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Corporation Bank, Mangalore in discontinuing the procedure for the absorption of empanelled temporary Peons and Part time Sweepers into permanent sub-staff and permanent Part time Sweepers w.e.f June, 2014 is legal and justified? If not, what relief the workmen are entitled for?”

1. The 1st Party Union claims that it is recognised by the 2nd Party for five decades and has been into negotiation on behalf of the workman with the 2nd Party Management. 2nd Party is a Nationalised Bank owned by the Government of India and is a Public Sector; as and when vacancies arise in the lowest cadre of the Bank, under the Bipartite Settlement arrived in the Banking Industry level, the 2nd Party is bound to fill up the vacancies; they have to appoint temporary Sub-Staff within a maximum period of three months; as per the Bipartite Settlement the temporary service rendered by the temporary workmen shall be treated as Probationary period for the purpose of increments and service; as per Para 20.12 of the Bipartite Settlement preference shall be given to the temporary sub-staff while filling up permanent vacancy of sub-staff, even the Sastry Award also has similar clause, any violation of the Bipartite Settlement amounts to breach of settlement and is punishable with imprisonment. For a long time, the 2nd Party is appointing temporary sub-staff in clear vacancies. Applications were called for temporary posts of the Sub-Staff from the local candidates sponsored by Employment Exchange / Sainik Boards. After interview, they were selected, appointed and empanelled; since 01.01.1982 2nd Party has maintained the data of the empanelled temporary employees; they are paid minimum of the pay scales of permanent Sub-Staff but without Provident Fund, Attendance Register / Payment Register; from 25.06.2014 they have not empanelled the temporary employees though employed 500 Casual Workers; there are more than 2500 temporary sub-staff and 1600 Part Time Sweepers, these workmen numbering 4000 are serving the 2nd Party for decades with the hope of being appointed as permanent employees;

Thousands of temporary sub-staff, part time sweepers were absorbed into regular service by the Bank by extending permanent sub-staff pay scales and benefits. 2nd Party has issued Rules for filling up the sanctioned vacancies in sub-staff cadre of the Branch and Offices from 18.03.1998. In the said guidelines Management has agreed to fill up temporary post created against the permanent vacancies within a period of three months of creation of the vacancy; they have also stated that on 03.11.1997 they have agreed with the 1st Party Union to consider the permanent part time sweeper for filling up of the post of permanent sub-staff; the Management had directed the Officials to fill up the sub-staff post in the Branches immediately as soon as Branch is opened.

2. It is further pleaded that in the year 2009, 2nd Party brought amendment to the procedure of empanelling temporary sub-staff / peons / PTS. The new Branches / Offices and existing Branches where there is no temporary panel had to place indent with the local Employment Exchange, advertise the vacancies in Local Vernacular Language News Paper, publish the same in the office notice board; wherever temporary panel of sub-staff and PTS were existing, their service has to be utilised for filling up of the post of permanent sub staff / part time sweeper, by conducting interviews as per Para 20.12 of the First Bipartite Settlement. It was clarified that in such situations it was not required to issue open advertisement / notification to the Employment Exchange. The employment of temporary sub staff / PTS since 2009 is in accordance with the Banks norms, procedures and rules and has become the Service Condition which cannot be changed without following the procedure envisaged under the Act, regarding change of Conditions of Service.

3. It is further pleaded that, the number of empanelled temporary sub staff was 4,139 in the year 2016; the Management has not empanelled temporary sub staff from the year 2014; 500 casual workers are appointed by following all procedure that is followed for empanelling the temporary sub-staff / part time sweepers. On 16.10.2015 all of a sudden 2nd Party issued Circular No. 652/2015 banning empanelment of temporary peons / PTS; the Branches / Offices were directed to fill up the permanent vacancies from time to time by conducting direct recruitment process by issuing open advertisement and notification to Employment Exchange; it is the unilateral action of the Management to deny the right of empanelled temporary sub-staff / PTS amounting to change of Condition of Service of temporary sub-staff / PTS; the change of Condition of Service of temporary sub-staff / PTS is affected, without issue of notice to the concerned individual workman; new sets of service conditions are introduced for temporary employees without discussing with the 1st Party Union or the concerned 4,000 workmen. 2nd Party has given a go bye to the Para 20.08 and 20.12 of Bipartite Settlement, they have violated Para 508 C and 493 of Sastry Award and also ignored Sec 25-H of the Industrial Dispute Act and also Chapter V of the Industrial Dispute Act.

4. It is further pleaded that the repeated request of the 1st Party Union to withdraw the change of condition of service imposed on 4,000 temporary sub-staff / PTS is not heard, hence the Industrial Dispute was raised; during the period of conciliation 2nd Party appointed 202 temporary sub-staff / PTS from the empanelled list; during the conciliation meeting held on 04.04.2018 the Management informed that the Government of India has sent a guideline to dispense with the interview from the appointment of sub-staff / PTS in the Bank, hence the conciliation meeting ended in failure. The empanelled temporary sub-staff and PTS are entitled for their absorption with regularisation from the date of their entry into service.

5. 2nd Party countered the claim on following grounds:

The dispute raised is not an Industrial Dispute under Sec 2(k) of the Act, since the temporary empanelled sub-staff are not the members of the 1st Party Union. The temporary peons are neither discharged nor dismissed nor terminated. The recruitment process of an Organisation cannot be termed as terms of labour. All the appointments in the Bank are governed by established Rules and Regulations. The Service Conditions and other relative terms of service applicable to workman staff in the Bank are governed by the Bipartite Settlements arrived from time to time. Prior to such settlements, the service terms and conditions was, as per the P. Sastry Award which was modified by Justice K. T. Desai Tribunal. As per the Government guidelines, the recruitment of Subordinate Staff, whether temporary or permanent has to be made through the medium of Employment Exchange / Sainik Boards, after compulsory notification of vacancies. When a permanent vacancy arises, all the candidates from the selected panel whose services were utilised on temporary basis are to be interviewed and one amongst the best has to be recommended for filling the vacancy. Accordingly, guideline is issued in Circular No. 56/84 dated 11.07.1984, same guideline is reiterated in Circular No. 97/98 dated 18.03.1998.

6. Consequent to the judgment of the Apex Court in the case of Excise, Superintendent, Malkapatnam, Krishna District, Andhra Pradesh vs K. B. Vishveshwara Rao and others, the Department of Personnel and Training, Government of India in terms of OM No. 14024/96-Estt(D) dated 18.05.1998, advised that all the vacancies have to be filled on regular basis, and notified to the local Employment Exchange and given wide publicity on All India basis in the Employment News / Rojgar Samachar; Recruitment Notices have to be

displayed in the Office Notice Board; As per letter F. No. 5/18/6/98 IR dated 20.11.2000 of the Government of India, notice may be published in widely circulated local Newspapers, instead of publishing in Employment News. Same guideline was reiterated by the OM No. 14024/1/2004-Estt(D) dated 10.12.2004 issued by Department of Personnel and Training, Government of India; vide letter F. No. 20/31/2018-SCT(B) dated 05.05.2008, the Ministry of Finance, Government of India, advised the 2nd Party to follow the instructions contained in DOPT OM No. 14024/1/2004-Estt(D) Dated 10.12.2004 strictly, while filling up the posts of sub-staff / PTS. Accordingly, the 2nd Party Bank reviewed the policy of recruitment of Subordinate Staff as well as empanelment of temporary Subordinate Staff in the 2nd Party Bank and issued revised guidelines, vide HO Circular No. 374/2009 dated 26.06.2009. Accordingly, wherever empanelled peons / PTS already exist they have to be utilised and appointed by conducting interviews as hitherto followed in accordance with Para 20.12. of the First Bipartite Settlement. The PSBs are requested to adhere to the law laid down in Secretary, State of Karnataka and others Vs Umadevi and others, accordingly revised policy of recruitment of subordinate staff in the Bank is issued vide circular No. 652/2015 dated 16.10.2015. The Ministry of Finance vide communication in F. No. 2/2/2015 – IR dated 22.12.2015 advised the PSBs to discontinue the interview for recruitment of workmen of the Bank, in that view of the matter alternative methods of selection process in place of interview mechanism is under consideration.

7. It is further pleaded that the service of the empanelled temporary subordinate staff is utilised to fill the leave vacancy of the permanent subordinate staff, the empanelled temporary subordinate staff are engaged during the vacancy of the post of permanent sub-staff as a stop gap arrangement. There is no process / practice of regularisation of service of the empanelled temporary subordinate staff / PTS in the Bank; the appointments in the Bank are public appointment and they have to follow the Rules and Regulations of public appointment. The changes made in the recruitment procedure cannot be called as change in service condition. During the conciliation the 2nd Party had only submitted the facts before the Conciliation Officer which was in the knowledge of the Union as well; the Recruitment Rules and selection procedure adopted by the Bank is in line with the law laid down by the Hon'ble Supreme Court in Secretary, State of Karnataka and Others Vs Umadevi and others.

8. Both parties have adduced evidence and the documents placed on record by them are all admitted documents. Both have submitted their respective arguments also.

9. Nothing contrary to their case emerged during the cross-examination of either MW-1 or WW-1. The argument submitted by them is mere reiteration of their claim and counter claim. In that view of the matter let me commence the appreciation by reading the referred issue. The presupposition of the referred issue is, '*there was a procedure and practice of absorption of empanelled temporary peons and part time sweepers.....*'. That has steered the 1st Party Union to contend that such absorption is the condition of their service / empanelment and discontinuation of the same amounts to change of service condition which warranted a notice of change under Sec 9-A of the Act. There is some difficulty in accepting the said argument, since the empanelment by itself does not amount to offer of employment. Even that it is not the case of the 1st Party also. However, the guidelines issued by the Head Office in 1984 at Ex M-1, Para 5 contemplates the procedure for employment of temporary sub staff and PTS and at Para 8 contemplates filling up of the permanent vacancy from out of the empanelment; subsequently the circular No. 97/98 / Ex M-2 also contemplates the *filling up of permanent vacancy, either through transfer or by selection of a new candidate from among the temporary panel / Employment Exchange Sponsored and the eligible part time sweepers on graded Scale wages.....* Para 2.2 of Ex M-2 refers to the outcome of the joint meeting held with the 1st Party Union on 03.11.1997 wherein they had agreed on the formality to be completed for filling up of the permanent sub-staff / PTS vacancy from the empanelled temporary sub-staff / PTS. Direction is issued vide Ex M-2 to the Branches at Para 2.4 C(i), to fill up the permanent vacancy from the list of empanelled temporary sub-staff, Para 3 recites the earlier H.O Circular No. 383/97 that "*in future where temporary employee engaged against a permanent vacancy continuously, is eventually selected as permanent employee, the period of temporary service rendered would be considered as part of the period of probation reckoned from the date of initial appointment in the Bank against the permanent vacancy....*" Ex M-3 dated 20.11.2000 is the direction of the Ministry of Finance, to appoint through process – it is not disputed that very same process is followed for empanelment of the temporary sub-staff and Part Time Workers also. Further Ex M-5 is the direction from the Ministry of Finance, dated 05.05.2008 regarding Government guidelines/instruction on recruitment of staff through Employment Exchange. Mandates by way of Ex M-3 and Ex M-5 are not at all questioned by the 1st Party. At the same time it needs to be noted that none of these mandates expressly prohibited absorption of eligible empanelled candidate to the permanent post.

10. Ex M-6 is the revised Recruitment Policy of 16.10.2015 sub-Para (a) Discontinues prevailing system of empanelment of temporary Peons / temporary PTS. If the recruitment policy and empanelment of temporary peons and temporary PTS were different subjects having no semblance to each other, then there was no reason why such discontinuation of empanelment of temporary peons and temporary PTS should have been brought in Ex M-6. However, no express ban is imposed regarding absorption from empanelled list as was done so far in the document also.

Ex W-1 the Photostat copy of a Circular of the Ministry of Finance dated 16.08.1990 is produced by the 1st Party Union to demonstrate that the Banks were allowed to utilise the existing panel of temporary employees to the post of Clerical / Subordinate Cadre.

11. The trumpet for the 2nd Party against filling up of vacancies from the list of empanelment is the judgment of the Apex Court, in the matter of Secretary, State of Karnataka and Others Vs Umadevi and Others reported in 2006 (4) SCC.

They contend that they were prompted to revise the recruitment rules / reviewing policy of 2015 in accordance with the guidelines of the Ministry of Finance, and the undertaking given by the Ministry of Finance, Government of India, before the Hon'ble High Court of Delhi in the matter of Dharmendra Prasad Singh and others Vs The Chairman, SBI and others, undertaking the Public Sector Banks would not violate the ratio of the judgment of the Apex Court in the case of Umadevi and others (supra).

In the judgment of the Apex Court reported in 2006(4) SCC 1, Secretary, State of Karnataka And others Vs Umadevi And Others, DD 10 April, 2006 in Para 44 it is held,

'One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme'.

Thus, the Apex Court distinguished the circumstance as against other Public vacancies which are to be filled in accordance with the guidelines laid in the said judgment.

12. There is no evidence suggesting that mere empanelment would culminate in appointment to the regular post, as and when the vacancy arise. Ex W-1 at Para 3 would refer to the provision in the Bipartite Settlement Para 20.12 which contemplates that the *temporary workman will be given preference for filling up of permanent vacancies and if selected, they may have to undergo probation.*

13. From a conjoint reading of above admitted documents, it stands clear that the absorption of empanelled temporary Peons and Part Time Sweepers into permanent Sub-Staff and permanent Part Time Sweepers though was in vogue, it was not automatic absorption from the list but on interview and selection. What is discontinued by the modification of the Recruitment Policy vide Ex M-6 dated 16.10.2015 is the empanelment. The empanelled body is not dissolved, like any other candidates these empanelled members have to participate in the fresh process of selection along with other candidates by applying in response to open advertisement and notification to the Employment Exchange.

14. In the light of the above position of law and facts, if any empanelled temporary peon or part time sweeper having served for 10 years or more against a permanent vacancy of sub-staff and permanent part time sweeper, there is no justification to deny him his legitimate demand to absorb him to the said post if he is not otherwise disqualified. Though there are eligible candidates, preference shall be given to such empanelled members who have served for more than 10 years against a sanctioned post. Neither the revised policy nor the judgment of Umadevi would come in the way of the 2nd Party for such absorption.

AWARD**The reference is accepted.**

The action of the 2nd Party / Management of Corporation Bank, Mangalore in discontinuing the procedure for the absorption of empanelled temporary Peons and Part time Sweepers into permanent sub-staff and permanent Part time Sweepers w.e.f June 2014 is not legal.

2nd Party is directed to consider the members of the empanelment who have worked against a permanent vacancy / sanctioned post for more than 10 years, if they are not otherwise disqualified to the above posts.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 06th March, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 मार्च, 2020

का. आ. 378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 65/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2020 को प्राप्त हुआ था।

[सं. एल-12011/58/2006-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 13th March, 2020

S.O. 378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 13.03.2020.

[No. L-12011/58/2006-IR(B-II)]

SEEMA BANSAL, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 65/2006

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं. L-12011/58/2006-IR(B-II) दिनांक 03/10/2006

महामंत्री, सेंट्रल बैंक वर्कर्स आरगेनाइजेशन,
सी-13, ओझा जी का बाग,
गांधी नगर, जयपुर।

बनाम

1. सहायक महाप्रबन्धक,
सेन्ट्रल बैंक ऑफ इण्डिया,
क्षेत्रीय कार्यालय, आनन्द भवन,
संसार चन्द्र रोड़, जिला-जयपुर।
2. शाखा प्रबन्धक,
सेन्ट्रल बैंक ऑफ इण्डिया,
शाखा वैशाली नगर/टाँक रोड़,
जिला-जयपुर।

उपस्थित :

प्रार्थी की ओर से : श्री आर.सी.जैन —प्रतिनिधि
अप्रार्थी की ओर से : श्री राजीव शर्मा —अभिभाषक

: अधिनिर्णय :

दिनांक : 28-02-2020

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 3.10.2006 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (क) व 2-(I) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित किया गया :-

“Whether the action of the management of Central Bank of India in not giving the posting to Sh. M.P. Verma on promotion as Head Cashier-II at Jaipur after making transfer orders at Jaipur itself on 17-1-2006 is justified ? If not, what relief the workman is entitled to?”

2. दिनांक 16.11.2006 को विवाद प्राप्त होने पर अधिकरण द्वारा उभयपक्ष को आहूत करते हुए प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. तदुपरान्त पीठासीन अधिकारी का पद रिक्त रहने के कारण दिनांक 18.1.2010 को प्रार्थी की ओर से दावे का अभिकथन प्रस्तुत किया गया। प्रार्थी का कथन है कि अप्रार्थी संख्या 1 ने क्षेत्रीय कार्यालय जयपुर के अधीन प्रधान खजांची द्वितीय के तीन रिक्त पदों हेतु लिपिक वर्ग में कार्यरत कर्मचारियों से आवेदन आमंत्रित किये थे। इन आवेदनों के आधार पर विपक्षी ने लिपिक वर्ग में कार्यरत तीन कर्मचारियों सर्व श्री बी.बी. मोदी, एस.डी. श्रीवास्तव तथा एम.पी.वर्मा को प्रधान खजांची द्वितीय के पद पर नियुक्ति हेतु प्रस्ताव देते हुए पदस्थापन किये। जिसमें एम.पी.वर्मा को वैशाली नगर, जयपुर शाखा में पदस्थापित किया। इन आदेशों में यह निर्देश था कि प्रस्ताव स्वीकार हो तो ज्ञापन की अन्य प्रतियों पर हस्ताक्षर कर शाखा प्रबंधक को लोटा दे और दिनांक 19.1.2006 से शाखा में प्रधान खजांची द्वितीय के पद पर कार्य करना प्रारम्भ कर दे। सर्व श्री बी.बी. मोदी व एस.डी. श्रीवास्तव ने इस प्रस्ताव को स्वीकार नहीं किया। किन्तु एम.पी.वर्मा ने इस प्रस्ताव को स्वीकार करते हुए स्वीकृति दे दी। इस स्वीकृति पर शाखा प्रबंधक वैशाली नगर, जयपुर ने आदेश पंजिका में उन्हें दिनांक 19.1.2006 से प्रधान खजांची द्वितीय के पद पर कार्य करने का आदेश जारी किया। विपक्षी बैंक की पदोन्नति नीति के अनुसार पदोन्नति प्रस्ताव को अस्वीकार करने की दशा में संबंधित कर्मचारी अपने पद से उच्चतर भत्तों एवं पदोन्नति हेतु डिबार कर दिया जाता था। सर्व श्री बी.बी.मोदी एस.डी. श्रीवास्तव इस प्रकार दिनांक 17.1.2007 तक के लिये उच्चतर भत्तों और पद स्थापन के लिये डिबार हो गये। विपक्षीगण द्वारा श्रम संगठन के दबाव में आकर सर्व श्री बी.बी. मोदी व एस.डी. श्रीवास्तव को अनुचित लाभ देने के लिये दिनांक 17.1.2006 को प्रधान खजांची द्वितीय के पद पर पद स्थापन हेतु जारी आदेशों को निरस्त करने की कार्यवाही की जाने लगी। ताकि इन दोनों को वैशाली नगर जयपुर में ही पदस्थापित किया जा सकें। जबकि इस स्थान पर एम.पी.वर्मा को (जो प्रार्थी संगठन के सदस्य है) पदस्थापित किया जा चुका था। विपक्षीगण द्वारा इस प्रकार एम.पी.वर्मा को अवैध तरीके से प्रधान खजांची द्वितीय के पद पर कार्य नहीं करने दिया गया। एम.पी.वर्मा दिनांक 19.1.2006 से ही प्रधान खजांची द्वितीय के पद पर वैशाली नगर, जयपुर शाखा में पदस्थापित होने तथा विशेष भत्ता पाने के अधिकारी है। अतः वाद स्वीकार कर घोषित किया जाने के एम.पी.वर्मा को दिनांक 19.1.2006 से प्रधान खजांची द्वितीय के पद पर पदस्थापित है और देय समस्त आर्थिक लाभ पाने के अधिकारी है।

4. विपक्षीगण की ओर से दिनांक 30.4.2010 को वादोत्तर प्रस्तुत किया गया। उनका यह कथन है कि प्रेषित विवाद औद्योगिक विवाद नहीं है। इसलिये रेफरेन्स अवैध है। प्रार्थी की सेवा शर्तों के बारे में कोई विवाद नहीं हुआ। प्रधान खजांची द्वितीय का पद “पदोन्नति पद” नहीं है। दिनांक 17.1.2006 को भूलवश प्रबंधन द्वारा आदेश जारी कर दिया गया, जिसका खुलासा समझौता अधिकारी के समक्ष प्रस्तुत जवाब दिनांक 30.1.2006 में किया गया है। प्रार्थी द्वारा

प्रस्तुत किये गये कथन आधारहीन हैं। प्रार्थी को अवैध रूप से प्रधान खजांची द्वितीय के पद पर कार्य करने से नहीं रोका गया। इसलिये प्रार्थी कोई अनुतोष पाने का अधिकारी नहीं है। अतः वाद निरस्त किया जावे।

5. प्रार्थी ने अपनी साक्ष्य में महावीर प्रसाद वर्मा को परीक्षित किया एवं प्रलेखीय साक्ष्य में प्रदर्श डब्ल्यू-1 से डब्ल्यू-7 प्रलेख प्रदर्शित किये।

6. विपक्षी ने अपनी साक्ष्य में श्रीमती सुषमा झा प्रबन्धक (एच.आर.डी.) व महेन्द्र कुमार गुप्ता शाखा प्रबन्धक को परीक्षित किया तथा प्रलेखीय साक्ष्य में प्रदर्श-एम 1 व 2 प्रदर्शित किये।

7. दिनांक 5.2.2020 को मैंने उभयपक्ष के परस्पर विरोधी तर्क सुने और उपलब्ध साक्ष्य का परिशीलन किया। प्रार्थी के प्रतिनिधि का यह तर्क है कि दिनांक 17.1.2006 को विपक्षीगण ने जो प्रस्ताव प्रदर्श डब्ल्यू-1 एम.पी.वर्मा को दिया था, उसे, प्रदर्श डब्ल्यू-6 प्रस्ताव की प्रति पर एम.पी.वर्मा ने दिनांक 18.1.2006 को स्वीकार कर लिया था और शाखा प्रबंधक वैशाली नगर, जयपुर द्वारा दिनांक 18.1.2006 को ही एम.पी.वर्मा को दिनांक 19.1.2006 से शाखा में प्रधान खजांची द्वितीय के पद पर कार्य करने का आदेश दे दिया गया था। विपक्षीगण द्वारा इस आदेश को वापस ले लिया जाना कहा गया है किन्तु प्रदर्श-एम 2 पत्र दिनांक 18.1.2006 न तो शाखा प्रबंधक वैशाली नगर, जयपुर और न ही एम.पी.वर्मा को संसूचित किया गया। इसलिये इस आदेश के तथ्यों से एम.पी.वर्मा किसी प्रकार बाध्य नहीं होते हैं। चूंकि यह पत्र प्रभाव में ही नहीं आया इसलिये एम.पी.वर्मा शाखा प्रबंधक के निर्देशानुसार दिनांक 19.1.2006 को प्रधान खजांची द्वितीय के पद पर पदस्थापित हो गये और इस पद के सभी आर्थिक परिलाभ पाने के अधिकारी हैं।

8. विपक्षीगण के अभिभाषक ने अपने तर्कों में यह कहा है कि श्री एमपी वर्मा को प्रदर्श-एम 2 पत्र के तथ्यों से शाखा प्रबंधक के माध्यम से दिनांक 18.1.2006 को ही सूचित कर दिया गया था, इसीलिये प्रदर्श डब्ल्यू-7 आदेश के अनुसरण में दिनांक 19.1.2006 से एम.पी.वर्मा को प्रस्तावित पद पर कार्य न करने का निर्देश दे दिया था। एम.पी.वर्मा अपने साक्ष्य में प्रदर्श-एम 2 पत्र की जानकारी होना स्वीकार करते हैं। चूंकि प्रधान खजांची द्वितीय का पद कोई पदोन्नति का पद नहीं था और एम.पी.वर्मा ने इस पद पर कभी कार्य भी नहीं किया, वह किसी आर्थिक परिलाभ को प्राप्त करने का अधिकारी नहीं है।

9. मैंने उभयपक्ष के तर्कों पर साक्ष्य के सन्दर्भ में विचार किया।

10. इस विवाद में यह विचारणीय है कि क्या विपक्षीगण द्वारा दिनांक 17.1.2006 को एम.पी.वर्मा को प्रधान खजांची द्वितीय के पद पर पदोन्नत करने के प्रस्ताव के उपरान्त एम.पी.वर्मा द्वारा प्रस्ताव स्वीकृत कर लिये जाने व 19.1.2006 से शाखा वैशाली नगर में कार्य करने का आदेश दिये जाने से एम.पी.वर्मा को पदोन्नत पद पर देय आर्थिक परिलाभ पाने के अधिकार हैं?

11. विपक्षी की यह आपत्ति है कि केन्द्र सरकार द्वारा इस अधिकरण को विवाद संदर्भित करने का आदेश वैध नहीं है। इस सन्दर्भ में इस अधिकरण का यह सुविचारित अधिमत है कि समुचित सरकार जो कि इस प्रकरण में केन्द्र सरकार है द्वारा अधिनियम की धारा 10 के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में यह विवाद इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित किया गया है। इसलिये यह अधिकरण इस सन्दर्भ की वैधता का परीक्षण करने हेतु सक्षम नहीं है। विपक्षी ने इस संदर्भ आदेश को किसी सक्षम न्यायालय में चुनौती नहीं दी है। इसलिये मैं इस विवाद के अधिनिर्णयन हेतु अग्रसरित होना उचित समझता हूँ। यहां यह उल्लेख किया जाना भी उचित है कि सेवा नियमों के अधीन पारित किये गये पदोन्नति आदेश तथा आदेश के फलस्वरूप किसी कर्मकार को आर्थिक परिलाभ से वंचित किया जाना, निःसन्देह औद्योगिक विवाद है जिसका परीक्षण इस अधिकरण के क्षेत्राधिकार में है।

12. उभयपक्ष के अभिवचनों के अनुसार प्रधान खजांची द्वितीय के तीन रिक्त पदों हेतु लिपिक वर्ग से आवेदन आमंत्रित करना, श्री एम.पी.वर्मा द्वारा इस पद हेतु आवेदन करना तथा दिनांक 17.1.2006 को विपक्षी द्वारा उसे वैशाली नगर, जयपुर शाखा में नियुक्ति हेतु प्रस्ताव दिये जाने के पश्चात उसे स्वीकार लिया जाना विवादित नहीं हैं। प्रदर्श डब्ल्यू-1 द्वारा विपक्षी ने प्रार्थी को यह निर्देश दिया था कि प्रस्ताव स्वीकार किये जाने के उपरान्त वह दिनांक 19.1.2006 से वैशाली नगर, जयपुर शाखा में प्रधान खजांची द्वितीय के पद पर कार्य करना प्रारम्भ करें। एम.पी.वर्मा ने इस प्रस्ताव

पर स्वीकृति देते हुए दिनांक 18.1.2006 को अपने हस्ताक्षर कर दिये। इस क्रम में शाखा प्रबंधक द्वारा प्रदर्श डब्ल्यू-7 निर्देश दिनांक 18.1.2006 एम.पी.वर्मा को दिये और दिनांक 19.1.2006 को द्वितीय पारी में ड्यूटी पर आकर प्रधान खजांची द्वितीय के पद पर कार्य करने का निर्देश दिया। इसके उपरान्त विपक्षी का यह तर्क है कि उन्होंने शाखा प्रबंधक वैशाली नगर, जयपुर को प्रदर्श-एम 2 पत्र जारी कर यह निर्देश दिया था कि वह एम.पी.वर्मा को यह सूचित कर दे कि उक्त नियुक्ति प्रस्ताव को वापस ले लिया गया है तथा एम.पी.वर्मा की सेवा प्रधान खजांची द्वितीय के पद पर प्रयोग ना करें, चाहे एम.पी.वर्मा ने पद को स्वीकार कर लिया हो। प्रदर्श-एम 2 पत्र में विपक्षीगण ने आदेश/प्रस्ताव को वापस लेने का यद्यपि कोई कारण वर्णित नहीं किया है किन्तु प्रदर्श-एम 1 सहायक श्रम आयुक्त को प्रस्तुत प्रतिउत्तर में विपक्षीगण ने आदेश वापस लिये जाने का कारण भी वर्णित किया है। विपक्षी के अनुसार दिनांक 17.1.2006 को जब पदस्थापन आदेश (प्रदर्श डब्ल्यू-1) जारी किया गया तो यह समझा गया था कि एम.पी.वर्मा सी.बी.डब्ल्यू.ओ. राजस्थान के क्षेत्रीय सचिव हैं, और यह पद संरक्षित श्रेणी में आता है। इसलिये एम.पी.वर्मा को उनकी बिना बारी के वर्तमान शाखा वैशाली नगर, जयपुर में ही प्रधान खजांची द्वितीय के पद पर पदस्थापन के आदेश दे दिये गये। किन्तु जैसे ही यह तथ्य ज्ञात हुआ कि क्षेत्रीय सचिव का पद संरक्षित नहीं है। उन्होंने त्रुटि सुधार करते हुए तीनों आदेश रद्द कर दिये।

13. प्रार्थी के प्रतिनिधि का यह तर्क है कि पत्र प्रदर्श-एम 2 पत्र न तो शाखा प्रबंधक को प्राप्त होना, न ही एम.पी.वर्मा को तदनुसार सूचित किया जाना विपक्षी ने प्रमाणित किया है, इसलिये पदोन्नति आदेश के अस्तित्व में रहने से प्रार्थी को उक्त पद के आर्थिक परिलाभ देय होते हैं।

14. मैने इन तर्कों पर उपलब्ध साक्ष्य के प्रकाश में मनन किया। प्रार्थी ने दावे के अभिकथन के पैरा 10 में यह कहा है कि एम.पी.वर्मा को दिनांक 19.1.2006 से अवैध रूप से प्रधान खजांची द्वितीय के पद पर कार्य नहीं करने दिया जा रहा है। इसी कथन के समर्थन में एम.पी.वर्मा ने शपथपूर्वक साक्ष्य में यह कहा है कि उसे दिनांक 19.1.2006 से प्रधान खजांची द्वितीय के पद पर विपक्षीगण ने अवैध रूप से कार्य नहीं करने दिया। इन कथनों एवं साक्ष्य की निष्पत्ति यही है कि प्रार्थी स्वयं के अनुसार, प्रस्तावित पदोन्नति वाले पद पर दिनांक 19.1.2006 से उससे कार्य नहीं लिया गया अर्थात् उसने प्रस्तावित पदस्थापन वाले प्रधान खजांची द्वितीय के पद हेतु विहित कार्य नहीं किया। इस प्रकार कार्य न लेने का एकमात्र आधार विपक्षी द्वारा दिनांक 18.1.2006 को ही प्रदर्श डब्ल्यू-1 आदेश/प्रस्ताव को वापस ले लेना ही प्रकट होता है। जैसा कि प्रदर्श-एम 2 शाखा प्रबंधक को सम्बोधित पत्र से स्पष्ट है। एम.पी.वर्मा ने अपने प्रतिपरीक्षण में प्रदर्श-एम 2 पत्र को देखकर यह स्वीकार किया है कि "इसकी उसे जानकारी है।" एम.पी.वर्मा को प्रदर्श-एम 2 पत्र की जानकारी होना एवं शाखा प्रबंधक द्वारा दिनांक 19.1.2006 को प्रार्थी से नवीन पद पर कोई कार्य ही न लिया जाना यह निष्कर्षित करने हेतु पर्याप्त है कि विपक्षी ने दिनांक 18.1.2006 को अपने शाखा प्रबंधक को नियुक्ति प्रस्ताव वापस लेने का सन्देश न केवल प्रेषित किया वरन् उस से संसूचित भी किया। यही कारण रहा कि शाखा प्रबंधक ने एम.पी.वर्मा को इस आदेश के वापस लेने के तथ्य से अवगत करवाते हुए दिनांक 19.1.2006 को पूर्व आदेशित, द्वितीय पारी में नवीन पद पर कार्य न करने को कहा। किसी पत्र में वर्णित तथ्यों की संसूचना का यदि प्रलेखीय प्रमाण प्रस्तुत न भी किया गया हो— किन्तु यदि उस पत्र में वर्णित निर्देशों का अनुपालन सम्बंधित व्यक्ति/व्यक्तियों द्वारा पत्र के अनुरूप कर दिया गया हो, तो यह उपधारणा सम्भाव्यताओं की बहुलता के आधार पर की जानी चाहिये कि पत्र में वर्णित तथ्यों की संसूचना संबंधित पक्षकारों को कर दी गई है। इस स्थिति में जबकि प्रस्तावित नियुक्ति के आदेश को क्रियान्वयन के पूर्व ही वापस ले लिया गया हो, एम.पी.वर्मा को भी इस आदेश वापसी से तदनुसार संसूचित कर दिया गया हो, जिसके प्रभाव से एम.पी.वर्मा द्वारा नवीन पद पर कार्य भी नहीं किया गया हों, तो इस स्थिति में इस अधिकरण के सुविचारित अभिमत से एम.पी.वर्मा नवीन पद पर देय किसी आर्थिक लाभ को प्राप्त करने का अधिकारी प्रमाणित नहीं होता है।

15. विपक्षी ने प्रदर्श-एम 1 प्रतिउत्तर में क्षेत्रीय श्रमायुक्त केन्द्रीय जयपुर को दिनांक 17.1.2006 के आदेश को वापस लेने का तथ्य कारण सहित सूचित कर दिया था। एम.पी.वर्मा ने अपने प्रतिपरीक्षण में यह स्वीकार किया है कि वह कुछ समय के लिये सेन्ट्रल बैंक वर्कर्स आर्गेनाइजेशन के कार्यालय सचिव के पद पर रहा था। कार्यालय सचिव का पद "संरक्षित कामगार" की श्रेणी में नहीं है। इस स्थिति में यदि कोई आदेश भूलवश या तथ्यों की गलत जानकारी के आधार पर जारी कर दिया गया हो और सदभाविक रूप से उक्त आदेश के क्रियान्वयन के पूर्व ही उसे वापस ले लिया

गया हो तो ऐसा आदेश, संबंधित कर्मकार को कोई परिलाभ जो कि नवीन पद से जुड़ा हो प्राप्त करने का अधिकार सृजित नहीं करता है।

16. उपर्युक्त विवेचन के उपरान्त विपक्षी द्वारा एम.पी.वर्मा को दिनांक 17.1.2006 को नियुक्ति प्रस्ताव प्रेषित करना व एम.पी.वर्मा द्वारा उक्त प्रस्ताव को स्वीकार कर लेने के उपरान्त दिनांक 18.1.2006 को ही या कार्यग्रहण के पूर्व उक्त आदेश को विपक्षी द्वारा वैध रूप से वापस लेना प्रमाणित होता है। इस आदेश के अनुसरण में दिनांक 19.1.2006 को द्वितीय पारी में एम.पी.वर्मा से नवीन पद का कोई कार्य न लिया जाना भी भलीभांति प्रमाणित है। इसलिये प्रधान खजांची द्वितीय के पद पर आदेश के अनुसरण में कोई कार्य न करने के कारण एम.पी.वर्मा को उक्त पद हेतु देय कोई आर्थिक परिलाभ प्राप्त करने का अधिकार नहीं है। विपक्षी प्रबंधन सेन्ट्रल बैंक ऑफ इण्डिया द्वारा प्रार्थी एम.पी.वर्मा को प्रधान खजांची द्वितीय के पद पर पदस्थापित न करने में कोई अवैधता नहीं है एवं प्रार्थी किसी अनुतोष का अधिकारी नहीं है।

17. अधिनिर्णय तदनुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

18. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 13 मार्च, 2020

का. आ. 379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 04/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.03.2020 को प्राप्त हुआ था।

[सं. एल-12011/154/2004-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 13th March, 2020

S.O. 379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 13.03.2020.

[No. L-12011/154/2004-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD MARCH 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 04/2005

I Party

The General Secretary,
Vijaya Bank Workers Organisation,
37/1, I Floor, Car Street, Ulsoor,
BANGALORE – 560008.

II Party

The General Manager,
Vijaya Bank, Head Office,
41/2, M.G. Road, Trinity Circle,
BANGALORE – 560001.

Appearance :

Advocate for I Party : Mr. D.R. Vishwanath Bhat

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12011/154/2004-IR(B-II) dated 17.12.2004 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of management of Vijaya Bank is justified in dismissing the services of Sh. B. Balakrishna Reddy, Clerk, w.e.f. 06.08.2002 on the grounds of doing acts prejudicial to the interest of the bank under clause No. 19.5(J) of Bipartite Settlement? If not, what relief the said workman is entitled to?”

1. The 1st Party Union has espoused the cause of its member, Sh. Balakrishna Reddy / Clerk / employee of the erstwhile Vijaya Bank (on amalgamation Bank of Baroda) as a measure of punishment, since the allegations against him came to be proved during the Departmental enquiry. In his claim statement, the 1st Party challenged the fairness of the Domestic Enquiry held against the workman and the legality passed thereon.

2. The 2nd Party refuted the claim statement allegations and while justifying the action taken against the workman.

3. On the rival pleadings, a Preliminary Issue was raised regarding the fairness of the Domestic Enquiry conducted against the 1st Party workman. After a full-fledged trial, the issue was answered against the Management holding that,

“The Domestic Enquiry conducted against the 1st Party by the 2nd Party is not fair and proper”.

4. Thereafter, the 2nd Party in their effort to substantiate the charges against the workman examined two witnesses and rebuttal evidence is adduced by the 1st Party.

5. Both have submitted oral / written argument.

6. The allegation against the 1st Party workman vide charge sheet dated 05.11.2001 was to the effect while working at Madanpalle Branch as Clerk from 18.10.1985 till his suspension on 27.02.2001,

Firstly, he misappropriated various amounts remitted by customers to a tune of Rs. 3,02,000/- to the credit of their respective LTD Accounts while working in the loan section and manipulated the books of accounts (as detailed in the Charge Sheet).

Secondly, he thereafter remitted the accounts misappropriated by him (as detailed in the Charge Sheet).

Thirdly, in order to conceal fraudulent acts of misappropriation, he manipulated the books of accounts i.e., the balancing register of LTD accounts from February 2000 to January 2001.

7. The 1st witness examined for the 2nd Party on the merits of the case was, the Investigating Officer who was working as the Senior Manager in the Regional Office at Vijayawada. His evidence is to the effect that, the Branch Manager Madanapalle had reported that the Branch has received three credit slips purportedly prepared by the 1st Party workman for the credit of certain LTD Accounts. The account number mentioned in the LTD slips did not find similarity while comparing with the account numbers in the LTD registers; there was a difference of Rs. 3,00,000/- as on the last day of February 2001 and this gave suspension that the 1st Party had misappropriated LTD credits.

The witness further detailed the documents examined by him and the discrepancies found therein. He produced the original deposit / loan account balance register for the period 31.10.1999 to 31.01.2001.

During the cross examination he admits that, for advancing loan against Term Deposit Loan, the Bank obtains original term loan deposit receipt along with the application in DOC Form 54 and debit voucher. The loan will be paid either in cash or credited to the SB A/c of the customer; the FD receipt and DOC 54 will be pinned and kept in safe custody which will be in the joint custody of the Branch Manager and the Officer. The statement of those Branch Manager and the officer is not recorded by him. There was no complaint from the account holders against the 1st Party and he has not recorded the statement of customers.

The next witness was the then colleague of the 1st Party workman who was working in SB Cash and deposits; from February 2001 to August 2001, she was allotted work in the Cash Department. In that capacity, she identified the signature of the 1st Party workman on the document Ex M-37(a) / Deposit / Loan Account Balance Register. She has also stated that, the 1st Party subsequently remitted a sum of Rs. 3,00,000/- by crediting vouchers in his own handwriting on 19.02.2001 for a sum of Rs. 50,000/-, on 22.02.2001 a sum of Rs. 35,000/-, Rs.25,000/-, Rs. 30,000/- and on 23.02.2001 a sum of Rs. 1,60,000/- vide Ex M-29 to Ex M-33.

During cross examination she admits the suggestion that Ex M-29 to Ex M-33 are in the handwriting of the 1st Party and his signature is not found there.

8. The 1st Party workman during his rebuttal evidence stated to the effect that, he has not committed any misconduct as alleged; he was only a Clerk not an Officer or Manager; he had no power to sanction loan to anybody in respect of LTD account (loan on term deposit). The fixed deposit certificate will be in the safe custody of 2nd Party Branch and the certificates are kept in the safe deposit volvt which will have two keys; the Manager and the Officer will be custodian of these keys; it was not in his custody and he is not aware of any loan amount borrowed by the parties.

During the cross examination, he admits that he worked under loan and advances section though he was unable to remember the exact period. He admits the reply given by him to the charge sheet vide Ex M-38 and also another representation given by him seeking revocation of suspension vide annexure 39. He admits that in the loan and Terms Deposit Register wherever he made entries he has put his initials; Ex M-37(c) is his signature. He also admits that total amount of Rs. 3,00,000 was remitted to five different accounts of customers. He further admits that the five vouchers under which the remittance is made vide Ex M-29 to Ex M-33 are prepared by him in his own handwriting.

9. Sh. BDK for the 1st Party submits that, MW-3 during the cross examination admits that customers who come to the Bank requests the Bank Officials to fill up the Bank and filling up the Forms at their request would not amount to misconduct and the 1st Party has not signed the challan Ex M-29 to Ex M-33. It is also the contention of the 1st Party that, at the relevant point of time he was working only as a Clerk but not as an Officer, it was the Branch Manager who had the authority to sanction the loan on recommendation of the Officer. His duty was only to enter in the ledger as per the information provided from the loaning documents. The customer cannot file one more loan application when his loan certificate is placed under the joint custody of the Manager and the Officer at the time he availed the first loan. He could not have filed application for one more loan without the connivance with the Manager and the Officer. The account holders from whose account the money is allegedly misappropriated are not examined as witnesses. Just filling up of the Form on the request of the customer would not amount to misconduct. During his cross examination nothing was elicited to establish the charges. The entries made in LTD Registers by him has been counter signed and checked found by the Officials of the Branch.

In the premise of the above, I have gone through the case records. In his reply given to the charge sheet dated 06.12.2001, he had denied the charges however among other things had submitted thus,

"1.....

2. I further beg to submit that no sooner the lapses of procedural deviations involving the various LTD accounts, which have been sanctioned twice in respect of the single security were pointed out, than I took immediate steps, in my own interest and in the interest of the bank and remitted a total sum of Rs. 3 lacs on the following dates:

<i>19.02.2001</i>	<i>Rs. 50000/-</i>
<i>22.02.2001</i>	<i>Rs. 90000/-</i>
<i>23.02.2001</i>	<i>Rs. 160000/-</i>

3. I also wish to submit that none of the LTDs referred to in the charge sheet was raised by me. On the other hand, these loans were availed by the respective deposit holders and the same is evident from the composite letter of lien executed by the concerned borrowers.

4.....

5.....

6.....

7. Assuming for the sake of argument, but without admitting, even if the allegations of manipulations and other alleged acts of misappropriation were construed to be true, it can only be observed that the same are purely temporary in nature, mainly on the grounds of certain serious nature of procedural deviations, which has been followed in the Branch. Under such circumstances, the entire blame and responsibility for the whole episode cannot be placed at my doorstep."

10. In his appeal memo among other grounds he had averred

"....what has carried out by me as clerical staff during my tenure as a loan department staff was at the instance and instructions of the Officer in charge and the Branch Manager..."

11. Before this Tribunal the Investigating Officer had displayed in detail the investigation carried out by him and the documents verified the difference of Rs. 1,00,000/- for February 2000 between the LTD Balancing Register and the general ledger and another difference of Rs.3,00,000/- for the month of April 2000 which continued upto January 2001 and in the month of February 2001, the 1st Party paid Rs. 3,00,000/- to the credit of LTD account on various dates. He has cited to the letter dated 23.02.2001 of the 1st Party wherein, he admitted that he was working in the Loans and Advance Department which also included LTD Section during 1999 to 2000 – LTD 15/99 was granted and balance outstanding as on 16.10.1999 was Rs. 66,440/-. On the said date he prepared fresh LTD document for Rs. 60,000/- on the same security even though existing balance was outstanding and rounded off LTD 15/99 to show as if account is closed – the credit voucher dated 23.02.2001 for Rs. 1,60,000 to the credit of LTD account was prepared by him without mentioning LTD account number and party's name – in the back side of voucher, it is mentioned that account number 13/99 for Rs. 1,00,000/- and 15/99 for Rs. 60,000/- out of sum of Rs. 1,60,000/- a sum of Rs.60,000/- was credited to LTD account number 15/99 on 23.02.2001 and the entries are passed by the 1st Party; while raising the fresh LTD on 16.10.1999, he has not closed LTD 15/99 and it was closed subsequently on 23.02.2001. During interrogation he submitted that while raising fresh LTD of Rs. 60,000/- he has not closed existing LTD's and simply rounded off without passing necessary vouchers; he remitted the account at later date.

The witness likewise have given the details of manipulation in respect of fresh LTD account 80/99 granted on 11.11.1999 for Rs. 1,00,000/- though the existing balance outstanding was Rs. 1,13,550/- and the 1st party had prepared the voucher and rounded off old LTD 13/99 and he has prepared the credit voucher dated 22.02.2001 to the credit of LTD account 16/99 of Smt. P. Kamalamma; he has signed the voucher and remitted the cash of Rs. 25,000/-.

He has averred with regard to the LTD account 16/99 as per Branch records standing in fictitious name of Sh. G. Amarendra for Rs. 5,000/- against the security of Rs. 21,000/-, he was present on 22.02.2001. Out of Rs. 25,000/- to the credit of 16/99 of Smt. P. Kamalamma only Rs. 10,000/- was credited and the balance amount to LTD accounts 47/99 and 36/98 at Rs. 10,000/- and Rs. 5000/- respectively on that date; he has entered the credit vouchers.

He has further stated about the information given by the husband of Smt. Kamalamma informing that Smt. Kamalamma availed LTD of Rs. 1,00,000/- and it was closed subsequently and fresh LTD was availed five to six months of the closure. Similarly he has averred about the account of Sh. Venkataramana Reddy who has availed Rs. 40,000/- LTD account No. 47/99 on 15.06.1999. On 19.01.2000, LTD of Rs. 42,000/- was granted in the same security, the vouchers for the fresh LTD 96/99 was prepared by the 1st Party and LTD 47/99 was rounded off without necessary remarks. The 1st Party has remitted Rs.30,000/- on 22.02.2001 and has prepared the credit voucher; a sum of Rs. 10,000/- was credited to the LTD account 47/99.

Further he has stated with regard to the LTD 36/98 sanctioned to Sh. K Manjunatha Reddy loan of Rs. 50,000/- availed by K Manjunatha Reddy on 26.06.1998 in LTD 36/98 against security of Rs. 60,000/-. A fresh loan of Rs. 50,000/- was granted on 22.01.2000 in LTD No. 99/99 against the same security of 60,000/-; the balance loan was 54,044/- as on that day. The 1st Party rounded off earlier LTD 36/98 and prepared the fresh loan 99/99. The 1st Party remitted Rs. 50,000/- to the said account 19.02.2001 to the account No. 36/98 by preparing the credit voucher. The credit voucher of 16/99 LTD a sum of Rs. 5,000/- is credited to LTD 36/98 on 22.02.2001; the party rounded off the old LTD 99/99 even though the balance was outstanding in his account.

He has remitted 35000/- cash to the LTD account 99/99 on 22.02.2001 and has signed on the back of the voucher for having remitted the cash and vouchers were entered on 22.02.2001. Further LTD 18/99 stands in the name of Smt. P. Siddamma who availed LTD of Rs. 7,500/- on 27.02.1999 and it was closed on 28.04.1999. There is a credit voucher for Rs. 35,000/- dated 22.02.2001 to the credit of LTD account number 18/99 of Sh. K. M. N. Reddy. As on 22.02.2001 the LTD 18/99 does not exist as per LTD register. LTD 96/99 standing in the name of R. Venkataramana Reddy is closed on 24.04.2000, out of proceeds of deposit which was liened to the account. There is credit vouchers for credit for Rs. 30,000/- to LTD account 96/99 which does not exist as on 22.02.2001. A sum of Rs. 30,000/- dated 22.02.2001 was credited to LTD account No. 47/99 in the name of Sh. R Venkataramana Reddy.

In the balancing register for February 2000, it is mentioned as Rs. 6,28,456/- but the actual total is Rs. 5,28,456/-. On perusal of page total for February 2000 the actual balance is Rs. 17,44,948/- but as per balancing register it is Rs. 18,44,948/-; there is a difference of Rs. 1,00,000/- with the General Ledger. For the month of March 2000 there is difference of Rs. 2,10,000/- between the Balancing Register and the General Register. In the month of April 2000 as per the Balancing Register the total is Rs. 28,60,411/- but the actual

balance id 25,60,411/-; the difference of Rs. 3,00,000/- continued till Jan 2001. The 1st Party inflated the page totals in the Balancing Registers and put his signature.

The 1st Party vide his letter 23.02.2001 addressed to the witness informed that LTD amount was not credited to the respective accounts over sight and later credited Rs. 3,00,000/- to the respective accounts. Vide his reply to the queries of the witness, in his letter dated 01.03.2001 he had replied that, he has prepared the LTD documents one to five referred in the letter and entered in the register and the accounts were rounded off in the LTD Register without passing necessary slips which were passed subsequently. Ex M-16 is his Enquiry Report.

12. Unfortunately, for the 1st Party there was nothing contradicting the above averments of the witness during his cross examination thereby the above evidence has gone unchallenged. He has not disputed his Handwriting in Ex M-37(a), M-37(b) and M-37(c). He has not shown during his rebuttal evidence why and how he committed the above irregularities in the Loan Account Balance Register. Though, it is possible that, being a Clerk, he could not have committed the misconduct as alleged in the Charge Sheet as his own. In this Industrial Adjudication we are not at distributing the responsibility of the misconduct among inmates of the Branch, we are only concerned about the incriminating evidence that is brought against the workman before this Tribunal. It is not his case that real culprit is scot free and he alone is discriminated. Though, the loss suffered by the Bank is made good subsequently by him, things stand clear that he intentionally indulged in temporary misappropriation of the customers money, tampered the Bank Records which is a serious misconduct, prejudicing the interest of Bank and also a gross misconduct under Sub Clause (J) of Clause 19.5 of Chapter XIX of the Bipartite Settlement 1966. Wherefore, the punishment imposed on him thereby dismissing him from service w.e.f 06.08.2002 is justified.

AWARD

Reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 03rd March, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बेअंत परमार सिक्यूरिटी एजेंसी एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 19/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.03.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2018) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Beant Parmar Security Agency and other, and their workman, which was received by the Central Government on 17.03.2020.

[No. Z-16025/4/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****PRESENT: SH. A.K. SINGH, PRESIDING OFFICER****ID No. 19/2018**

Registered on:-18.07.2018

Jagdish S/o Karan Singh, R/o Village & Post Office Rabhda,
Tehsil Gohana, DIstt. Sonapat.

...Workman

Versus

1. Beant Parmar Security Agency, SCO 10, 2nd Floor Near PNB Bank, Amaravati Enclave, Panchkula (HR)-134107.
2. Panipat Refinery, North Area Bohali Pipeline, Bohali, Panipat.

...Respondents/Managements

AWARD**Passed on:-06.02.2020**

1. The workman has directly filed this claim petition under Section 2-A of the Industrial Disputes Act, 1947, in pursuance of the certificate issued by the Assistant Labour Commissioner, Central, Karnal, dated 05.07.2018, with the averment that he was appointed as Security Guard by respondent no.1 Beant Parmar Security Agency for respondent no.2, Panipat Refinery on 01.08.2015 at the salary of Rs.2,500/- per month. During the course of service, there was no complaint for the services rendered by the workman to the management. Management orally terminated the services of the workman on 15.11.2017 without giving any notice or in lieu of notice compensation as is required in the Law. The workman has rendered his service more than 240 days continuously in the preceding year from his termination. The termination of the workman is against the Law as well as provisions incorporated under the Industrial Disputes Act, 1947. Hence, it is prayed that management be directed to reinstate the workman with full back wages and other consequential reliefs.

2. Respondent No.1 i.e. Beant Parmar Security Agency has filed its written statement, alleging therein that aforementioned reference has been made on the demand letter dated 11.05.2018 made by the workman. The workman has not approached the Hon'ble Tribunal with clean hands and the reference is liable to be dismissed on the ground of concealment and misrepresentation. The claimant is not a workman under the provisions of Industrial Disputes Act therefore, the claimant is not entitled to invoke the jurisdiction of this Hon'ble Tribunal. On 08.08.2017 (Annexure R-1), a warning letter was issued to the workman vide which the workman was sought to be relieved from service due to his lapses. The workman was paid salary for the month of August, September and October 2017. The workman continued to work upto 14.11.2017 after submission of apology letter. Thereafter, on his own and without even informing the management, he did not report for duty w.e.f. 15.11.2017 after completing work on 15.09.2018. Due to not extension of contract by IOCL Firm M/s Beant Parmar Security Agency is no more working on any other project and the same has been closed down. The claim of the workman for being reinstatement in service has been become infructuous as the respondent is not doing any work after 15.09.2018. Therefore, it is prayed that the reference be dismissed and answered against the workman in the interest of justice.

3. Respondent No.2 i.e. IOCL-NRPL, has filed its written statement, alleging therein that the answering respondent has awarded the work of providing intelligence and ancillary activities to M/s Beant Parmar Security Agency i.e. respondent no.1 vide work order no.24855200 dated 31.08.2016. As per terms and conditions of the contract, the contractor/respondent no.1 can remove any guard/supervisor with new security personal. Remaining paras are denied for the want of knowledge. It is therefore, prayed that the petition against the answering respondent may kindly be dismissed with costs.

4. In support of his case, the workman Jagdish has submitted his affidavit as evidence but respondents did not turn up to cross-examine the workman and opportunity of both the respondents to cross-examine the workman is closed on 12.09.2020. Thus, affidavit tendered by the workman and facts alleged in the affidavit remains uncontroverted and unrebutted.

5. Subsequently, respondent no.1 i.e. Beant Parmar Security Agency, Proprietor Beant Parmar made his presence with his counsel and submitted his affidavit as Ex.MW1/A who has been cross-examined by the workman-counsel. During the course of cross-examination, respondent no.1 witness BRG. Beant Parmar, Sole Proprietor M/s Beant Parmar Security Agency has accepted all the facts alleged in the claim petition except that

service of the workman had been terminated by him. This witness has accepted that workman had rendered his services from 01.08.2015 to 15.11.2017 when he left the job at his own without the information to the respondent. This witness has further accepted that notice has not been issued to the workman because he left his job voluntarily.

6. Respondent No.2 i.e. Panipat Refinery has not adduced any evidence.

7. I have heard Sh. Vikas Gulia, Ld. Counsel for the workman and Sh. Sanjeev K. Uppal, Ld. Counsel for respondent no.1 and have gone through the records carefully.

8. Before averting to the bone of contention between the parties, it will be beneficial to mention that this is a case in which witness of respondent no.1 has admitted that workman was employed by respondent no.1 i.e. Beant Parmar Security Agency for the security purposes of respondent no.2 Panipat Refinery on 01.08.2015. It is also not disputed that the services of the workman abruptly came to an end on 15.11.2017. In this connection, learned counsel of the workman contended that respondent no.1 i.e. Beant Parmar Security Agency's Supervisor verbally ordered that workman will not report for duty from 15.11.2017 without any reason while case put up by respondent no.1 is that workman has left his job voluntarily without information to the respondent.

9. During the course of argument, the issue raised by the learned counsel of respondent no.1 is that claimant is not a workman as is defined under Section 2(S) of the Industrial Disputes Act, 1947. There is nothing mentioned in the written statement as well as affidavit filed by the witness of respondent no.1 BRG. Beant Parmar, Sole Proprietor M/s Beant Parmar Security Agency as to why claimant Sh. Jagdish does not fall within the definition of workman. In this regard, reference can be made to the decision in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

10. Learned counsel of workman has submitted that services of the workman has been by the supervisor of respondent no. i.e. Beant Parmar Security Agency orally without any reason and notice or enquiry. Per contra, it is pleaded and argued by the learned counsel of respondent no.1 that workman has abandoned his job without information to the respondent hence, question of issuing notice or payment for one month salary in lieu of notice is not required as per the Law. In this connection, learned counsel of respondent no.1 has drawn my attention towards the judgment of Hon'ble Delhi High Court in the case of Parshuram Shah Vs. Govt. of NCT of Delhi & Anr., Writ Petition (C) No. 5986 f 2007, decided on 03.09.2007 and judgment of Hon'ble Bombay High Court in the case of Vilas Ganapati Patil Vs. Suyog Backwell Vasantdada Audyogik Vasahat, Sangli, Writ Petition No. 4662 of 2001, decided on 15.06.2018. Learned counsel further argued that the law propounded by the Hon'ble High Court of Delhi and Hon'ble Bombay High Court does not require any notice in the case of abandonment of job or service at the will of the workman himself.

11. Contrary to this, learned counsel of workman placing reliance in the Writ Petition No. 8898(1994) OM dated 30.11.2016, 2017 LLR 95 Kaleram Vs. Presiding Officer and Anr. Argued that in such a situation, management is duty bound to issue a show cause notice to join the service back to the workman to prove his bona fide but respondent no.1 witness BRG. Beant Parmar has clearly accepted that he has not issued any notice so far to the workman for his joining in the service. In the case of Vilas Ganapati Patil (supra) Hon'ble High Court was of the view that burden to prove that services of the workman was terminated is upon the workman. The workman/petitioner does not offer himself for service to completion for termination hence, there is no denial to prove the petition. Hon'ble Delhi High Court in the case of Parshuram Shah Vs. Govt. of NCT of Delhi & Anr. (supra), has is held that remaining silent for a period of one month before making a complaint to

the Assistant Labour Commissioner and non-cross-examination of the management witness is a sufficient proof that workman had abandoned his job voluntarily by virtue of un rebutted evidence. Learned counsel of the respondent no.1 while placing reliance of Annexure R-1 filed with affidavit and reply of the workman dated 08.08.2017 R-2 argued that a show cause notice was issued to the workman for negligence of duty and reply of the workman itself is indicative that he left his job for the subsequent mistake and respondent-security agency has not terminated his services. Though, these documents has not been duly proved by the respondent no.1 witness BRG. Beant Parmar but by virtue of the non-strict applicability of the Evidence Act even if it is read in evidence, the argument advanced by the learned counsel of respondent no.1 find no force in it because there is nothing on record that workman committed any mistake on the fateful day of termination i.e. on 15.11.2017 as such, question of voluntarily leaving the job does not appear to be correct. Moreover, it is the duty of the security agency to mention the mistake or negligence of duty committed by the workman on 15.11.2017 to prove that workman had left the job at his sweet will in the light of assurance given in R-2 i.e. reply of workman. To my mind, the argument advanced by the learned counsel of workman has force that if the workman has left his job at his own, there is no need for contesting the case before re-conciliation officer as well as before this Tribunal.

12. The proposition of law laid down by the Hon'ble Punjab & Haryana High Court in the case of Writ Petition No.8898(1994) OM dated 30.11.2016, 2017 LLR 95 Kaleram Vs. Presiding Officer and Anr., appears to be sound and reasonable because it is a case in which either party has not adduced any cogent evidence in this case and if it is so, no material had been produced by the workman to substantiate that he was not allowed for the duties by issuing communication to the respondent-management. At the same time respondents has not issued any notice in writing asking the workman to report back on duty if he remains unauthorized absent or absented himself from 15.11.2017. There is nothing correspondence between the workman and respondents with respect to the service condition of the workman. In such a scenario in the case of Kale Ram(supra), Hon'ble Court has held that the contention of the respondent could not be relied that workman had abandoned the job on his own because of non-issuance of show cause notice to join the service back. Having regard to the conduct of the workman and respondent no.1 in so far as the pursuing or abandonment of the service is concerned, there are lapses and it is the respondent no.1 who have to issue show cause notice to the workman to join the service. The proposition of law laid down by the Hon'ble Punjab & Haryana High Court, it can be safely inferred that it was the duty of the respondent no.1 i.e. Beant Parmar Security Agency issuing a notice to workman for joining the service workman to workman but it has not been done in the case. To my mind, in given circumstances and evidence on record, it cannot be observed that it was not the workman who had left the job at his own rather he was forced to left the job by the respondent no.1 for the reason best known to it.

13. Now the residual question which arises for consideration is whether the claimant is entitled to any relief of reinstatement and back wages? It is admitted and proved on record that workman had worked from 01.08.2015 to 15.11.2017 on regular basis. Moreover, the job of the workman was of perennial in nature subject to the agreement entered into between the respondent no.1 i.e. Beant Parmar Security Agency and respondent no.2 i.e. Panipat Refinery, North Area Bohali Pipeline, Bohli, Panipat. The proprietor of respondent no.1 M/s. Beant Parmar Security Agency witness BRG. Beant Parmar has clearly admitted and proved that the contract with respondent no.2 had come to an end and he has not engaged in any business so far with respect to the security agency as such, reinstatement of the workman with respondent no.1 is not possible in the absence of any evidence contrary produced by the workman.

14. The Hon'ble Apex Court in case of "Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324 has held as under:-

"The propositions which can be culled out from the aforementioned judgments are:

- (i) *In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- (ii) *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically*

plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

15. Yet in another latest case of **Hari Nandan Prasad vs. Food Corporation of India (2014) 7 Supreme Court cases 190** as under:-

“Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.”

16. In the recent decision reported as **2018 LLR 225 titled as District Development Officer & another vs. Satish Katilal Amrelia**, Hon’ble Apex Court while aptly applying the law laid down in earlier case of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177**, had awarded lumpsum compensation of Rs.2.5 lakhs to the workman and in Bharat Sanchar Nigam Limited (supra), it was observed as under:-

“33. It is clear from the reading of the aforesaid judgements that the ordinary principle of grant of reinstatement with full back wages when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatory required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularisation (see State of Karnataka Vs. Umadevi (3) 17). Thus, when he cannot claim for regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay, in such a situation, giving the relief of reinstatement that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of principle of last come first go, vis. While retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated, in such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement in such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such relief can be denied.”

17. Having regard to the recent judicial trends and duration of service rendered by the claimant/workman and closure of the security agency for the want of any contract, an amount of Rs.1 lakh appears to be just and reasonable. Hence, respondent no.1 i.e. Beant Parmar Security Agency is directed to comply the award within two months from the notification of the award by the Central Government. The reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, गुणवत्ता सेवा और समाधान वास्को डिगामा, (गोवा), और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 2, मुंबई के पंचाट (संदर्भ संख्या 43/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.03.2020 को प्राप्त हुए थे।

[सं. एल-42011/89/2013-आईआर (डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 381.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2013) of the Central Government Industrial Tribunal-cum Labour Court-2 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Quality Service & Solutions Vasco Da Gama, (GOA) & Others, and their workmen which were received by the Central Government on 16.03.2020.

[No. L-42011/89/2013-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/43 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. QUALITY SERVICES & SOLUTIONS

The Director,
M/s. Quality Service & Solutions
Rukmini Towers,
Vasco Da Gama,
[GOA].

AND

THEIR WORKMEN

The General Secretary,
The Marmagoa Waterfront Workers Union,
Mukund Building, 2nd Floor, P.O. Box No. 90,
VASCO DA GAMA,
[GOA] – 403 802.

APPEARANCES:

FOR THE EMPLOYER : Mr. Girish Sardesai, Advocate

FOR THE WORKMEN : Absent

Mumbai, dated the 4th February, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42011/189/2013-IR (DU) dated 12.07.2013. The terms of reference given in the schedule are as follows :

“Whether the punishment of dismissal of the workman, Shri Shubham Madkaikar from service with effect from 16.1.2013 by the management of M/s. Quality Services & Solutions is disproportionate and harsh ? To what relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.
3. On going through the Roznama, it appears that the union is absent since long. After filing statement of claim, union is absent even though the notice was issued to union.
4. As such the Union has not substantiated its claim by adducing evidence. Therefore the reference is liable to be rejected for want of evidence. Hence order.

ORDER

Reference is rejected for want of evidence with no orders as to costs.

Date: 04.02.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, एफएसीटी, एर्नाकुलम, कोचीन, और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – कोचीन के पंचाट (संदर्भ संख्या 16/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.03.2020 को प्राप्त हुए थे।

[सं. एल-42011/12/2014-आईआर (डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 382.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2014) of the Central Government Industrial Tribunal-cum Labour Court- Ernakulam, Cochin, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manage, FACT, Ernakulam, Cochin & Others, and their workmen which were received by the Central Government on 11.03.2020.

[No. L-42011/12/2014-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer
(Monday the 27th day of January 2020, 7 Magha 1941)

ID No. 16/2014

Workman/Union : The General Secretary
FACT Employees Association
Udyogamandal Eloor
Ernakulam - 683501
By Adv.K. Balachandran

Management : The General Manager
FACT Udyogamandal
Ernakulam –683501
By M/s. Krishnan Associates

This case coming up for final hearing on 13.11.2019 and this Tribunal-cum-Labour Court on 27.01.2020 passed the following:

AWARD

1. 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 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-42011/12/2014-IR(DU) dated 11.03.2014 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the action of the management of FACT in not restoring the wages drawn by the workman prior to his voluntary retirement and continuity of service in respect of Shri.Gopi while he was reinstated is justified ? If not to what relief the concerned workman/union is entitled ?”

3. After entering appearance the Union filed the claim statement. The Union raised the industrial dispute on behalf of workman K.R.Gopi. The workman belongs to Scheduled Caste and was appointed as an Attender on 28.12.1987 in the school run by the Management at Ambalamedu in the reservation category for the Scheduled Caste. He passed SSLC examination and was aged only 18 when he was appointed. The workman was employed in the school for nearly 17 years. The Management decided to transfer the management rights of the school to a private agency by virtue of an agreement dt.20.03.2004. According to the Management, the workman has become surplus. The Management vide order dt.24.03.2004 informed the teachers and staff that they will cease to be the staff of the school with effect from closing hours on 31.03.2004. The Management intimidated and coerced the workman to submit his VRS application denying redeployment in some other section of the plant holding that the work therein is of hazardous nature. The Management also informed the workman that if he did not opt for Voluntary Retirement, the letter dt.24.03.2004 issued by the Management will be treated as notice of termination. Though the Management assured re-deployment, they went back on their commitment later. Because of the intimidatory tactics by the Management, most of the employees and workers of the school opted for VRS. Since the Management threatened the workman with termination, the workman was forced to apply for VRS on 29.03.2004. The workman along with 22 other employees of the school filed W.P.no.10950/2004 before the Hon'ble High Court of Kerala for appropriate relief. While opting for VRS, the workman specifically stated that the VRS is subject to the final decision in the Writ Petition filed by them. On 17.04.2004 the workman gave a request to the Management for redeployment in the company and withdrawing his application for VRS before the same was accepted by the Management. However the Management without taking in to consideration the request of the workman for redeployment and his decision to withdraw the VRS application, issued order dt.19.04.2004 informing the workman that the application for VRS submitted by him has been accepted and he was relieved from the service of the Management on 19.04.2004. In the Memorandum no.6/19/89/BPE SCST-7 dt.27.03.1991 the Department of Public Enterprises, Ministry of Industry has specifically directed that the SC/ST representation in the Management shall be considered and if there is no adequate representation, the SC/ST employees shall not be retrenched as surplus staff. When the service of the workman was terminated by way of VRS, percentage of number of attendance belonging to SC/ST category in the Last Grade post in the entire company fell short of the reservation quota. Therefore the workman should not have been thrown out of service on the basis of surplus employee. The Management instead of disbursing the monetary benefit due to the workman as per VRS, paid up his dues without his consent to the credit society and housing society formed by the employees of Management. The workman was not even informed of the unilateral decision taken by the Management. The workman did not receive any VRS benefits. The Hon'ble High Court vide judgment dt.05.07.2006 in the Writ Petition filed by the workman and other ex-employees directed the Management to frame a Scheme within a period of two months from the receipt of the copy of the judgment, to accommodate the workman and other workers in the Management as and when vacancies arose subject to eligibility. The Management published a Scheme dt.17.10.2006. The workman and some of the employees filed W.A.no.1785/2006 against the decision of the Hon'ble High Court in W.P.no.10950/2004. The Hon'ble High Court directed the Management to take into consideration the length of service of the appellants in the school run by the Management and see whether some priority could be given to the appellants in the appointments by the Management. While so, the workman applied for a post of Attender in the Management in response to a notification in 2007 in newspapers. After test and interview, the workman was appointed in the post of Attender vide order dt.25.09.2008. The appointment was on the condition that the workman will have to surrender the Ex-gratia amount paid at the time the workman left under VRS, before joining the service. According to the Management, they gave a VRS Ex-gratia of Rs.3,03,394/- to the workman. The above said amount was adjusted by the Management against various dues payable by the workman and no amount was given as VRS Ex-gratia to the workman. The Management informed that the VRS benefits will be deducted from his salary in monthly installments with interest at the rate of 11.5% per annum. The installments

were being deducted from the salary of the workman after he joined the service of the Management. When the workman was re-appointed, the Management did not protect his basic pay drawn when he was working earlier. The workman was drawing a basic pay of Rs.5,600/- when the workman was sent out of employment through VRS. When he was re-appointed on 25.09.2008, his basic pay was treated as Rs.3,600/-. Even now the Management is recovering an amount of Rs.4,205/- from his monthly salary being recovery of VRS Ex-gratia. After all the deductions the workman is getting a monthly salary of Rs.625/-. When the hospital staff were taken over by the Management, the employees of the hospital were accommodated by protecting their basic pay whereas the workman is discriminated by re-fixing lower basic pay while redeploying him in the service of the Management. The workman is entitled for protection of basic pay as on 31.03.2004 when his service were terminated under the guise of VRS. Despite the directions issued by the Hon'ble High Court to accommodate the workman after charting out a Scheme for appointment against future vacancies and further to treat the length of service of the workman and other members of school staff for the purpose of determining various monetary benefits including the determination of payment and salary and protection of basic pay, the Management did not give any offer to the workman. The workman had to apply in response to an advertisement, attend a test and interview before he was selected against a vacancy which was in existence from 1998 onwards. The vacancy was available from November 1998. Another employee of the school Smt.Sofy John, who was also in a similar situation like that of the workman, filed a W.A.no.520/2007 before the Hon'ble High Court of Kerala as the Management did not consider her application to withdraw from the VRS opted by her. The Hon'ble High Court vide its judgment dt.06.06.2010 held that Smt.Sofy John is entitled to be continued in service notionally without any break but without any arrears of wages. She was directed to repay the terminal benefits received by her with 9% interest within one month from the date of the judgment. The workman stands on par with Smt.Sofy John as he also withdrew his VRS application before the same was accepted by the Management.

4. The Management filed written statement denying the above allegations. According to the Management, the reference and adjudication thereon are not maintainable and sustainable on law or facts. Matters prior to the appointment of the workman in the Udyogamandal Division of the Management company cannot be a matter of reference in this industrial dispute as the workman was not under ID Act while employed in school. The validity of the action with regard to Voluntary Retirement and other issues related to Ambalamedu School were considered by the Hon'ble High Court of Kerala in W.P.no.15397/2004 wherein the Hon'ble High Court upheld the action by the Management by a common judgment dt.05.07.2006. Hence all such statements on service in schools, Voluntary Retirement in school till his appoint as a workman in Udyogamadal Division of the Management company made in the claim statement are not admissible in the industrial dispute and therefore the Management desired that the maintainability of the industrial dispute may be decided as the preliminary issue before going into the merits of the case.

5. The Management company was running on profit since 1983-84 and started incurring loss due to various facts. As a step towards cost cutting, the Management decided to reduce the manpower on the roles of the company and further to outsource activities which do not form integral part of its activities. The Management company had established 4 schools and as part of re-structuring, it was decided to license out the schools to outside educational agencies w.e.f. 01.04.2004. Consequently, the Management company vide letter dt.07.02.2004 offered Voluntary Retirement Scheme to the teaching and non-teaching staff of the schools who became surplus due to licensing out. The workman was Attender-cum-marker in one of the schools. Notices were issued to the employees dt.07.02.2004 informing them that they may accept the Voluntary Retirement Scheme or otherwise to take the same as a notice of termination of their service. Most of the teaching and non-teaching staff including workman applied for VRS and the same was accepted on 15.04.2004 and 19.04.2004 and the employees were relieved on the same dates. All the amount due to the workman including his gratuity were credited to his Bank account. Some of the employees including the workman approached the Hon'ble High Court of Kerala in W.P.(C)no.10950/2004. Some of the employees whose VRS application was not accepted, continued in the service of the Management in view of the Interim Orders of the Hon'ble High Court. The Writ Petition was disposed off by the Hon'ble High Court vide a common judgment dt.05.07.2006 directing the Management company to prepare a Scheme by which petitioners in those Writ Petition can be accommodated in the Management company as and when vacancies arose, subject to their eligibility. As per the directions of the Hon'ble High Court, the Management company notified a Scheme on 17.10.2006. As per the said Scheme, when vacancies arise in the non managerial categories which are required to be filled up by external recruitment, teaching and non-teaching staff who availed VRS in 2004 would be considered subject to their meeting specifications required for the post along with other eligible candidates. It is also made conditional that such employees will have to surrender Ex-gratia benefits received by them under VRS. The Scheme also specify that such appointments would be fresh recruitment and no benefit would be given for the past service in the school or for the period during which the concerned candidates was out of service. The workman is one of the candidates who got the benefit of the above scheme. There was a ban of recruitment since 1998 in the

Management company and consequent on the restructuring in 2001, the ban in recruitment continued even after 2001. In 2006, Govt of India clarified that the ban in recruitment would not apply for filling up the reserved vacancies. One such post identified for filling back log vacancy was that of Office Attender reserved for Scheduled Caste. As per Govt of India directions an employee who left on VR from a PSU cannot be allowed to takeover employment in a PSU and there for the workman was not eligible against the advertisement. He was considered against the post only because of the Scheme dt.17.10.2006 framed on the basis of the directions of the Hon'ble High Court of Kerala. On the basis of the said Scheme, the workman was considered against the above said vacancy and was offered appointment on a consolidated salary applicable to the scale of Attender for a period of one year. After that he would be placed in the minimum of scale. He was also directed to return the Ex-gratia payment received by him. On the basis of submissions made by the workman, the workman was allowed to repay the Ex-gratia in installments with 11.5% per annum interest. He was also granted the scale of pay applicable to group 2 on completion of 6 months of his appointment and a minimum salary of group 4 on completion of 1 year of his appointment. The interest on Ex-gratia was also reduced from 11.5% to 9%. The Management denied the allegations that the workman is entitled for protection under the Memorandum issued by Department of Public Enterprises, Govt of India. According to them, the instructions issued by Govt of India is not applicable to the workman as he was an employee of the school which is a special entity. Retaining a SC /ST employee will not absolve the responsibility of the Management from recruiting against a back ward reserved vacancy in Udyogamandal division. All the amounts due to the workman consequent on VRS is credited to his Bank account and the same was intimated to him. The employees of the hospital staff cannot be compared to that of schools. Hospital staff who left on VRS was not employed by the company nor they are covered under any scheme for any such employment. The decision of the Hon'ble High Court of Kerala in Smt.Sofy John's case is based on the facts and circumstances of that case. Though Smt.Sofy John submitted a VRS application on 29.03.2004 she withdrew the same on the next day.

6. The Union filed rejoinder denying the allegations in the written statement filed by the Management. The Union denied the allegation of the Management that the Industrial Disputes Act was not applicable to the workman when he was employed in the school. In Para 4 of the written statement, the Management has admitted that the schools belong to them and the workman was working as Attender-cum-marker. It is not correct to say that the action of the Management was upheld in the judgment dt.05.07.2006. The Hon'ble High Court of Kerala both in Writ Appeal as well as in Writ Petition observed that it cannot ignore the claim of the petitioner therein and therefore direct the Management to frame a scheme for re-deployment of the employees. The Hon'ble High Court of Kerala in Writ Appeal further made clear that in the event of recruitment of staff, the Management may take into consideration the length of service of the employees of the school. This is precisely the issue raised by the Union in the industrial dispute. The Management is bound to restore his wages drawn prior to his voluntary retirement and continuity of service while he was reinstated. There was adequate number of vacancies available with the Management to accommodate the workman at the time of VRS. As per the scheme notified by the management, the workman is required to payback the benefits which he received on account of his Voluntary Retirement. In view of the above clause, there is a legal compulsion on the part of the Management to treat the previous service as a continuous service without any break. Had the Management not taken back the VRS benefits, then the service of the worker could have been treated as a different service. Thus the Management cannot approbate and reprobate in order to receive the best of both ends. The claim of the Management that the Memorandum of Department of Public Enterprises, Ministry of Industry, Govt. of India is not applicable to the workman, being an employee of a special entity like school is not correct. It is an admitted fact that the school was under the control of the Management and the VRS is sought by the Management only. The workman ought to have been appointed in the Management company as on the date of his VRS as there was vacancy available which is not denied by the Management. The Management failed to explain the reasons for paying Rs.625/- per month as salary after deductions which infringes the provisions of Article 14 & 21 of the constitution. The Union reiterated its stand that the employees of the hospital were given protection of salary when the hospital is taken over by the Management. In spite of the direction of Division Bench of the Hon'ble High Court of Kerala, the Management has not considered the length of service of the workman for determining the monetary benefits by protecting the basic pay. The claim of the Management that the workman was not eligible for consideration against a new post as an employee who left under Voluntary Retirement from a PSU cannot be allowed to be appointed again in a PSU is like a "Henry VIII clause". The facts of the case of Smt.Sofy John is exactly similar to that of the workman. The workman also withdrew the VRS application on 17.10.2014 whereas the application was approved by the Management only on 19.10.2014. Hence the judgment in Smt.Sofy John case and the ratio therein is squarely applicable to the workman.

7. On completion of pleadings, the Union examined WW1 and marked Exbt.W1 to W22(a) and M1 to M5. The management examined MW1 and marked Exbt.M6 to M17.

8. On the basis of the reference and pleadings the following issues are framed for decision.

1. Whether the industrial dispute is maintainable?
2. Whether the action of the management of FACT in not restoring the wages drawn by the workman prior to his voluntary retirement is correct?
3. Whether the action of the management of FACT in not giving continuity of service when he was reinstated is justify?
4. Relief and cost ?

9. Issue No.1

According to the learned Counsel for the management, the industrial dispute is not maintainable as the matters prior to the appointment of the workman in the Udyogamandal Division of the management company cannot be a matter of reference in this industrial dispute as the workman was not working in an industry covered under the provision of the Industrial Disputes Act. The workman was working in Ambalamedu School run by the management and the provisions of ID Act is not applicable to the employees of school. Further the legality of the action taken by the management for the voluntary retirement of the workman was considered by the Hon'ble High Court of Kerala in W.P. no. 15397/2004 and connected writ petitions and the action of the management was upheld by a common judgment dt.05.07.2006. Hence any claim prior to his appointment in Udyogamandal Division of the management company is not admissible in the industrial dispute. According to the learned Counsel for the Union, the management admitted that they established and run the schools. The management floated the Voluntary Retirement Scheme and the management framed a Scheme for appointing the non teaching and teaching staff of the schools in the company as directed by the Hon'ble High Court of Kerala. He also denied the claim of the management that the Hon'ble High Court upheld the validity of the Voluntary Retirement Scheme. The Hon'ble High Court of Kerala observed that it cannot ignore the claim of the petitioners and therefore directed the management to frame a scheme for deployment of the employees of the school. In the Writ Appeal, the Hon'ble High Court went a further step ahead stating that in the event of recruitment of staff in the non managerial categories as provided in the Scheme, the management may take into consideration the length of service of the employees in the school run by the management. As per the reference from the Govt, this Tribunal is required to examine whether the workman is entitled for protection of his salary as on his date of Voluntary Retirement and his continuity of service while he was reinstated in the service of the management. By the above reference, this Tribunal is not looking into any of the issues raised before the Hon'ble High Court in the Writ Petitions or in the Writ Appeals. Further it is a case of the Union that the management as far as the workman is concerned is the management company and not the school. In all the action taken by the Union as well as the workman individually and collectively, the management company was the opposite party. Hence it is not correct at this stage of proceedings to plead that the management company is not responsible under ID Act to handle the case of the workman. The only issue that is being considered in this industrial dispute is whether the workman is entitled for protection of his service and salary while he was working in the school.

10. The learned Counsel for the management relying on the decision of the Hon'ble Supreme Court of India in **Mukal Ltd Vs Mukal Staff and Officers Association**, 2004 0 AIR (SC)3905 argued that the issues regarding the Voluntary Retirement of the workman from the service of the school cannot be adjudicated in this proceedings as he was not a workman as defined under the ID Act. In the above referred case, the Hon'ble Supreme Court was considering an industrial dispute raised by the Staff and Officers Association. In that case, the officers will not come within the definition of workman and therefore the Hon'ble Supreme Court held that the Tribunal could not have adjudicated the dispute in so far as it relate to "non-workman". In the present case, the reference received from the Govt. is not dealing with the workman as an employee of the school. The reference is only with regard to protection of salary of the workman and his continued service with the management after reinstatement. The learned Counsel for the Union argued that the management cannot disown its responsibility at this point of time as the whole action for Voluntary Retirement, payment of compensation, framing of a scheme for redeployment etc. are done by the management only. Hence it is not possible to accept the pleading of the learned Counsel for the management that the industrial dispute is not maintainable.

11. Considering the above fact, I am inclined to hold that the reference is legally maintainable.

12. Issue No.2 & 3

The management was running 4 different schools and as a matter of cost cutting, they decided to license out the schools to a private entity w.e.f. 01.04.2004. The workman was working as Attender-cum-marker in Ambalamedu School. When the management decided to license out the education institutions to an outside agency, the teaching and non teaching staff working in the schools has become surplus. Hence the management

offered Exbt.M6 a Voluntary Retirement Scheme to these employees. The management vide Exbt.W2 communication informed the employees that they are being offered an opportunity to avail the Voluntary Retirement Scheme which will be operational from 24.03.2004 to 29.03.2004. The communication further states that this intimation may be treated as notice of termination if the employees are not opting for Voluntary Retirement Scheme. The workman submitted his application under VRS on 29.03.2004. The workman requested the management on 17.04.2004 for his redeployment in the company. However without considering the request, the management accepted the VRS submitted by the workman vide Ext.W6 dt.19.04.2004. Since the workman did not received any benefit under the Voluntary Retirement Scheme, he filed an application under RTI Act 2005. In the Exbt.W9 reply, the management clarified that he was entitled for an Ex-gratia and PL Encashment of Rs.3,25,093/- and the whole amount is adjusted against his dues as detailed in the communication. However according to the management, an amount of Rs.73,111/- was credited to the bank account of the workman vide Exbt.M7 and M8. To substantiate their recovery, the management produced Exbt.M9 communication from KSFE Ltd requesting the management to recover an amount of Rs.61,747/- from the terminal benefits of the workman. The employees including the workman challenge the VRS before the Hon'ble High Court of Kerala in W.P. No.10950/2004 and the Hon'ble High Court vide order dt.05.07.2006 directed the management to frame a Scheme to accommodate the employees in future vacancies. In the Writ Appeal No.1785/2006 filed by the employees along with the workman the Hon'ble High Court while approving the decision of Single bench vide Exbt.W1 made it clear that in the event of recruitment of staff in the non-managerial categories as provided in the Scheme, the management may take into consideration the length of service of the employees in the school run by the management and if some priority could be given to them, it would definitely help those teaching and nonteaching staff who are displaced from service half way through their career.

13. When the management decided to license out the schools to a private management, they declared the staff, teaching and non-teaching as surplus and came out with Exbt.M6 Voluntary Retirement Scheme(VRS). As per this Scheme once an employee avails himself of VRS from a PSU he shall not take up employment in another PSU. If he desires to pick up an employment in a PSU, he shall have to return the VRS compensation received by him to the PSU concerned. This proposition was again reiterated in an Office Memorandum produced as Exbt.M12. The workman submitted an application for VRS on 29.03.2004 as per Exbt. W3. According to him, he withdrew the application for Voluntary Retirement vide Exbt.W5 letter addressed to the Chairman & Managing Director on 17.04.2004. However the management accepted the VRS application of the workman vide Exbt. M1 letter. According to the management, they paid the VRS benefits to the workman through his bank account vide Exbt.M8 bank voucher. It is seen that an amount of Rs.73,111/- is transferred as VRS benefit to the account of the workman. The workman took a plea that he was not paid the VRS Ex-gratia and he applied vide Exbt.W8 under RTI Act. Exbt. W9 is a reply given by the management under RTI Act stating that VRS Ex-gratia is Rs.3,03,394/- and PL Encashment is Rs.21,699/- totalling Rs.3,25,093/-. The workman was also informed vide the above letter that the management adjusted the whole amount against company dues of KSFE, FACT Employees Co-operate Housing Society and FACT CD Employees Co-operative Credit Society. It is not clear regarding the amount paid to the workman through bank. According to the management, the payment to KSFE is made on the basis of the direction of Hon'ble High Court in W.P.(C) No.10472/2004 and the other payments were made on the basis of the agreements signed between the societies and the workman that the payments can be made from his salary or other benefits. According to the learned Counsel for the workman, the agreement with the societies and the management is that the installments can be deducted from the salary of the employee and not from the VRS benefits paid to the employee.

14. As per the direction of the Hon'ble High Court the management notified Exbt.M13 Scheme for employment of school staff who availed Voluntary Retirement. As per clause 6 of condition for employment, those considered for employment will have to surrender the Voluntary Retirement benefit that they have availed from the management. Further as per Clause 8, if appointment is offered, will be a fresh recruitment and no benefit will be given counting past service in the school or for the period during which the concerned candidate was out of service. According to the management, no recruitments were done under the Scheme as there was a ban by the Govt. for fresh recruitment. According to the management, the ban for recruitment for filling up of back log vacancies for SC/ST was lifted vide Exbt.M11 letter from Ministry of Chemical & Fertilizers, Govt. of India. However on a perusal of the above exhibit referring to earlier communications it can be seen that the Govt. of India was only reiterating its earlier decision that there is no ban for filling up back log promotion vacancies for SC/ST, and hence the claim of management that the ban was lifted by this order is not correct. The management initiated action for filling up the back log vacancies through special recruitment drive for SC/ST. A copy of the notification for filling up an Attender, Scheduled Caste vacancy was communicated to the workman through Exbt.M14 letter enclosing therein a copy of the notification in the newspaper. According to the workman, he was not in receipt of the same and he came to know about the advertisement through

newspaper. The workman applied for the post and he was selected after written and physical test. Workman was offered the job of Office Attender with the management company vide Exbt.M2 letter. In the above said letter, it was specified that being an ex-employee of the erstwhile Ambalamedu High School who left under VRS, he will have to surrender the Ex-gratia amount paid under Voluntary Retirement Scheme. The workman vide Exbt.M3 requested the management that he was given only Rs.74,000/- towards VRS benefits and he may be allowed to return the amount in installments, deducting from his salary. The management agreed with the proposal and the workman was directed to deposit the Ex-gratia amount of Rs.3,03,394/- in installment from his salary with interest at the rate 11.5%. The management reduced the interest rate to 9% vide Exbt. M4 letter.

15. As already pointed out the reference is confined to whether the workman is entitled to get his wages restored to that prior to his Voluntary Retirement and continuity in service when he was reinstated in the service of the management. The learned Counsel for the management argued that the workman is re-employed in the service of the management. However it is seen that the reference is whether the action of the management in not resorting the wages drawn by the workman prior to his Voluntary Retirement and continuity of service when **he was reinstated** is justified. Hence there is no ambiguity in the reference whether the workman is reinstated or re-appointed in the service of the management. Hence the issue whether the workman is reinstated or re-appointed is not part of the adjudication. The Hon'ble Supreme Court in **Hochtief Gammon Vs Industrial Tribunal, Bhuvanewar**, AIR 1964 SC 1746 held that "Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for adjudication by the Govt. by an order of reference passed U/s 10. It is not open to that Tribunal to travel materially beyond the terms of reference, determine the scope of its power and jurisdiction from case to case". The above decision is quoted with approval by the High Court of Madras in **Management of Premier Mills Ltd Vs Presiding Officer, Labour Court**, 2010 2 LLJ 757. The Hon'ble High Court of Kerala in **Canara Bank Vs Mohini**, 2019 2 KLT (sn) 58 held that the Industrial Tribunal may decide issues which are very much incidental to the main issue referred for adjudication before the Tribunal. The learned Counsel for the workman also relied on the decisions of Hon'ble Supreme Court in **Management of Express Newspapers (Pvt) Ltd, Madras Vs Workers**, 1963 KHC 526 to argue that the Courts must attempt to construe the reference not too technically or in a pedantic manner but fairly and reasonably.

16. The learned Counsel for the management argued that as per Exbt. M6 the workman is not entitled to be employed in a PSU after opting for Voluntary Retirement Scheme. The above argument of the learned Counsel is not fully correct as the Scheme provides that if an employee who opts for the VRS desires to take the employment with a PSU he will have to return the VRS compensation received by him to the PSU concerned. Hence the Voluntary Retirement Scheme is not prohibiting an employee who opted for VRS to again take up an employment with a PSU. This is also reflected in Exbt.M12 Office Memorandum. Hence the argument of the learned Counsel for the management the workman is offered an employment with the management only because of Exbt.M13 Scheme for employment for school staff who availed Voluntary Retirement is not correct. As pointed out earlier, the Scheme of employment of school staff who availed Voluntary Retirement specifically states that the appointments if offered will be a fresh recruitment and no benefit will be given counting past service in the school or for the period during which the concerned candidate was out of service. The learned Counsel for the workman relying on the decision of Hon'ble Supreme Court in **Central Inland Water Transport Corporation Vs Brojonath Gangly and others**, 1986 KHC 810 argued that this particular term of the Scheme is an unconscionable term made unilaterally by the management which is unfair to the employees in totality and hence shall not be accepted for deciding the reference as issued. The Hon'ble Supreme Court was considering the legality of Clause 1 of Rule 9 of the Service, Discipline and Appeal Rules 1979 of Central Inland Water Transport Corporation Ltd. The Hon'ble Supreme Court held that;

"The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with legality but are contracts containing terms which are so unfair and unreasonable that they shock the conscience of the Court. They are opposed to public policy and required to be adjudged void."

The learned Counsel for the workman argued that when the Ex-gratia benefits given at the time of Voluntary Retirement is taken back by the management from the poor workman, it is totally unfair and unreasonable on the part of the management to say that they will not consider the past service in the school. Applying the principle evolved by the Hon'ble Supreme Court in the above referred case with regard to an unconscionable term unilaterally made by the management, I don't have any hesitation to hold that such a term is not only unfair and unreasonable but also against public policy. It is seen that, in the Exbt. M2 offer of appointment the management has insisted the workman only to surrender the Ex-gratia amount paid to him at the time of Voluntary Retirement. There is no condition in the offer of appointment that the last salary paid to him while working in the school of the management will not be protected and his past service will not be counted for purpose of fixing the salary. Since the management is taking back the Ex-gratia payment made to the workman

at the time of VRS, he is entitled for protection of his last pay drawn and continuity of service from the date of his VRS to the date of his reinstatement with the management company.

17. The learned Counsel for the workman relied on Exbt.W7 Office Memorandum issued by the Ministry of Industry, Department of Public Enterprises, which provides for protection to Scheduled Cast and Scheduled Tribe in the context of surrender of surplus staff or retrenchment. According to the above memorandum while declaring surplus in a particular grade in a cadre, SC/ST candidates in that grade should not be included so long as the total number of SC/ST employees in that grade has not reached the prescribed percentage of reservation for SC/ST respectively in the concerned grade and in the cadre. The learned Counsel argued that there was a huge shortage of SC/ST candidates in the Attender cadre in the management in the year 2004 when the VRS was floated by the management and the workman ought to have been accommodated against such a vacancy. The learned Counsel for the management pointed out that the above said Circular was not applicable to the workman as he was an employee of the school and not that of the management at that point of time.

18. The learned Counsel for the workman also raised an issue with regard to the payments made by the management to various agencies out of VRS compensation without the consent of the workman. Relying on the decision of the Hon'ble High Court of Kerala in **Surendran Vs Mavelikkara Primary Co-operative Agriculture & RD Bank Ltd**, 2005 KHC 1796 the learned Counsel argued that the consent given by the employee to deduct the installments from monthly salary of the employee cannot be treated as a consent to make payments in lump sum out of the retirement benefits. The learned Counsel for the management submitted that the payment to KSFE is made on the basis of the direction of the Hon'ble High Court of Kerala and other payments are made on the basis of the agreement signed by the workman to repay the amount either from salary or **any amount payable** by the management to the workman. Further during the cross-examination the workman himself admitted that the payments made by the management were actually against the outstanding debts pending with various agencies and he cannot now claim that the payments made by the management are irregular.

19. Considering the facts, evidence and pleadings of either of the parties, I am inclined to decide the issues in favour of the workman and against the management, holding that the workman is entitled to protection of his last pay drawn before his voluntary retirement and continuity of service.

20. Issue No.4

In view of the findings in issue No.2 & 3, I am inclined to hold that the workman is entitled to get his last drawn wages at the time of his Voluntary Retirement. He is also entitled to get continuity of service without back wages from the date of his Voluntary Retirement to the date of his reinstatement.

Hence the issue is answered in favour of the workman and against the management.

Considering the findings on the above issues an award is passed holding that the action of the management of FACT in not restoring the wages drawn by the workman prior to his Voluntary Retirement and continuity of service in respect of the workman while he was reinstated is not justified. He is entitled for protection of the last wages drawn before his Voluntary Retirement and for continuity of service without back wages.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 27th day of January, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - Shri.Gopi K.R., dt.12.05.2016

Witness for the Management:-

MW1 - Shri.A.R.Mohan Kumar, dt.19.12.2016

Exhibits for the Workman:-

W1 - Copy of Community certificate No. KLM 2413/2005 dt.20.06.2005
Issued from Tahsildar, Kothamangalam

W2 - Copy of the order No. GM(CD)1/1-305 dt.24.03.2004 issued by

- Dy.General Manager(CD), FACT
- W3 - Copy of the VRS request dt. 29.03.2004 by the workman
- W4 - Copy of the reply dt.28.03.2014 given by Information Officer, FACT Ltd to the RTI application submitted by the workman dt.20.03.2014
- W5 - Copy of the request letter dt.17.04.2004 by the workman
- W6 - Copy of the letter no.CM(PER)-CD.PER-058 dt.19.04.2004 issued by Chief Manager(Personnel)/CD, FACT Ltd.
- W7 - Copy of the Office Memorandum No. 6/19/89-BPE (SC/ST) Cell dt.25.04.1991
- W8 - Copy of the request letter dt.04.10.2011 under RTI Act by the workman
- W9 - Reply dt.29.10.2011 issued by Information Officer, FACT Ltd.
- W10 - Copy of the judgment dt.05.07.2006 in the Writ Petition (C) No. 10950/2004 by the Hon'ble High Court of Kerala.
- W11 - Copy of the judgment dt.20.07.2007 in the Writ Appeal No. 1785/2006 by the Hon'ble High Court of Kerala.
- W12 - Copy of the paper advertisement dt.19.05.2007 by FACT Ltd.
- W13 - Copy of the reinstatement order dt.25.09.2008 by FACT Ltd.
- W14 - Copy of order No. CM(HR)C-3041 dt.27.10.2008 by FACT Ltd.
- W15 - Copy of reply CS-CO-1445-585 dt.07.07.2010 by the Information Officer, FACT Ltd.
- W16 - Copies of the salary statements issued for the months January, February, March and May 2014 by the management
- W17 - Copy of the salary statement for the month November 2015 issued by the management
- W18 - Copy of settlement dt.10.09.2008 arrived at between FACT Ltd and FACT Employees Association
- W19 - Copy of judgment dt.06.01.2010 passed in Writ Appeal No. 520/2007 by Hon'ble High Court of Kerala
- W20 - Copy of the salary statement for April 2003 issued by the management
- W21 - Copy of the salary statement issued on November 2008 issued by the management
- W22 - Copy of settlement dt.12.08.2014 between Udyogamandal Contractors Association and Contract Labours in FACT
- W22(a) - Page No.3 of Exbt.W22
- M1 - True copy of letter No. CM (PER)-CD.PER-058 dt.19.04.2004 from Chief Manager (Personnel)/CD, FACT
- M2 - True copy of the appointment order dt. 25.09.2008
- M3 - True copy of the request letter dt. 29.09.2008 by the workman to the Chairman & Managing Director, FACT
- M4 - True copy of letter No.M-HR-2250 dt.15.12.2010 from Manager (HR), FACT
- M5 - True copy of the request letter dt. 30.03.2009 from the workman to the Director (Finance), FACT

Exhibits for Management:-

- M6 - True copy of Voluntary Retirement Scheme dt.07.02.2004
- M7 - True copy of the letter No. AM(FIN)-PR-CD dt.02.07.2004 by AM (Fin), FACT to the Branch Manager, SBI, Ambalamedu
- M8 - True copy of the Bank voucher dt.02.07.2004 in favour of SBI, Ambalamedu

- M9 - True copy of the letter No.SDT/EKM/4039/05 dt.25.01.2006 from Office of the Special Dy.Tahshildar (RR), KSFE Ltd. to the Asst.Manager, FACT
- M10 - True copy of the Judgment dt.05.07.2006 in Writ Petition No.10950/2004
- M11 - True copy of the letter No.112/3/2001-HR-1 dt.20.04.2006 issued by Govt of India, Ministry of Chemical & Fertilizers
- M12 - True copy of the Office Memorandum No. 2 (32)/97-DPE(WC)/GL-LVI dt.06.11.2001 issued by Govt of India, the Dept. of Public Enterprises
- M13 - True copy of the Voluntary Retirement Scheme dt.17.10.2006
- M14 - True copy of the letter no.DYCM(HR)-1602 dt.29.05.2007 by Dy.Chief Manager(HR), FACT
- M15 - True copy of the application dt.05.06.2007 by the workman
- M16 - True copy of the judgment dt.20.07.2007 in Writ Appeal No. 1785/2006 by the Hon'ble High Court of Kerala.
- M17 - True copy of the letter No. M-HR:2797 dt.07.12.2009 by Manager (HR), FACT

नई दिल्ली, 17 मार्च, 2020

का.आ. 383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधक, भारत पर्यटन विकास निगम लि., मुंबई, और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 1 मुंबई के पंचाट (संदर्भ संख्या 07/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/178/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 383.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2014) of the Central Government Industrial Tribunal-cum Labour Court- 1 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manager, India Tourism Development Corporation Ltd., Mumbai & Others, and their workmen which were received by the Central Government on 04.02.2020.

[No. L-42012/178/2013-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

Present : JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

REFERENCE NO. CGIT-1/07 OF 2014

Parties: Employers in relation to the management of India Tourism Development Corporation Ltd.

AND

Their workman (Mrs. Shobha Anand)

Appearances:

For the first party Management : Ms. Priya Meena, Manager, ITDC Ltd.

For the second party / Union : Mr.N.N.Kankonkar, Adv.

State : Maharashtra

Mumbai, dated the 20th day of February, 2020

AWARD

1. The present reference has been made by the Central Government by its order dated 26.08.2016 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the Schedule to the said order are as under:

*“1. Whether the termination of service of the applicant w.e.f. 17.10.2008, who had put in continuous service of 15 years without any break eventhough on contract basis which was renewed from time to time is liable to be regularized on the role of ITDC, whose branches are scattered all over the country.
2. Whether the claim of Application for back wages w.e.f.17.10.2008 is justified? 3. If so, to what relief the workmen is entitled to?”*

2. A perusal of the order sheet reveals that the statement of claim was filed by the workman on 30.6.2014. Written statement was filed by the first party management on 21.11.2014. Thereafter the case was adjourned for filing Rejoinder on behalf of the second party workman. On several dates the case was adjourned for filing Rejoinder on behalf of the second party workman but no Rejoinder was filed.

3. On 24.01.2020, when the case was taken up for hearing, a Memorandum of Settlement was filed on behalf of both the parties along with an application filed on behalf of the second party workman stating that in view of the amicable settlement reached between the parties, the workman is not interested in pursuing the reference and prayed that the reference may be disposed of in view of out of court settlement.

4. In view of the Memorandum of settlement filed on behalf of both the parties and the application for disposal of the reference dated 24.01.2020 filed on behalf of the second party workman, no relief can be granted to the second party workman.

5. Reference is consequently answered by stating that no relief can be granted to the second party workman. The Memorandum of Settlement and the application filed by the second party workman shall form a part of this Award.

6. Award is passed accordingly.

Justice RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, टेलीकॉम फैक्ट्री, मुंबई, और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 2 मुंबई के पंचाट (संदर्भ संख्या 29/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.03.2020 को प्राप्त हुए थे।

[सं. एल-40011/12/2004-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 384.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2005) of the Central Government Industrial Tribunal-cum Labour Court- 2 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecom Factory, Mumbai & Others, and their workmen which were received by the Central Government on 16.03.2020.

[No. L-40011/12/2004-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT** : M. V. Deshpande, Presiding Officer**REFERENCE NO.CGIT-2/29 of 2005****EMPLOYERS IN RELATION TO THE MANAGEMENT OF TELECOM FACTORY**

The Chief General Manager,
Telecom Factory,
Deonar,
Mumbai – 88.

AND**THEIR WORKMEN**

The Circle Secretary,
National Federation of Telecom Employees BSNL
Union, Telecom Factory Circle,
Deonar,
Mumbai – 400088.

APPEARANCES:

For the Employer : Mr. M. B. Anchan, Advocate

For the Workmen : Mr. J. H. Sawant, Advocate

Mumbai, dated the 20th February, 2020**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-40011/12/2004-IR (DU) dated 09.12.2004. The terms of reference given in the schedule are as follows :

“Whether the action of the management of Telecom Factory, B.S.N.L., Deonar, Mumbai to discontinue the subsidized bus transport facility w.e.f. 01.05.2004 vide notice dated 31.03.2004 issued u/s 9-A of Industrial Disputes Act, 1947 is legal, proper and justified ? If not, to what relief the concerned workmen are entitled and from which date and what other directions are necessary in the matter ?”

2. After the receipt of the reference, both the parties were served with the notices.
3. In view of pursis [Ex.38], the second party union has withdrawn the reference.
4. As such the reference is withdrawn and hence disposed of. Hence order.

ORDER**Reference is withdrawn and hence disposed of with no order as to costs.**

Date: 20.02.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 55/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.03.2020 को प्राप्त हुआ था।

[सं. एल-17012/10/2005-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/2007) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 06.03.2020.

[No. L-17012/10/2005-IR(M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 55/2007

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं. L-17012/10/2005-IR(M) दिनांक 17.09.2007

नरेश कुमार यादव पुत्र स्व. श्री राम लाल यादव,
उर्फ रामनाथ यादव पोस्ट ठीकरीया, बाया-पावटा,
तहसील — कोटपुतली, जिला, जयपुर।

बनाम

वरिष्ठ मण्डल प्रबन्धक,
भारतीय जीवन बीमा निगम,
मण्डल कार्यालय, जीवन प्रकाश भवानी सिंह रोड,
जिला, जयपुर।

प्रार्थी की ओर से : श्री एम.एफ. बेग — अधिवक्ता

अप्रार्थी की ओर से : श्री जुगल किशोर अग्रवाल—अधिवक्ता

: अधिनिर्णय :

दिनांक : 10. 01. 2020

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 17.09.2007 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित किया गया “Whether the action of the management of LIC of India in terminating the services of Shri Naresh Kumar Yadav w.e.f., 30/9/1994 in disregard to provisions of Sections 25 G and 25 H of the Industrial Disputes Act, 1947 is legal, proper and justified? If not, to what relief the workman is entitled?”

2. दिनांक 29.03.2012 को श्रम मंत्रालय, नई दिल्ली द्वारा संशोधन पत्र द्वारा सेवासमाप्ति की तिथि को 30.9.1994 के स्थान पर दिनांक 30.09.2004 संशोधित किया गया।

3. उपयुक्त मूल विवाद के प्राप्त होने पर अधिकरण द्वारा दिनांक 3.10.2007 को उभयपक्ष को आहूत किया गया। पीठासीन अधिकारी का पद रिक्त रहने के कारण दिनांक 29.10.2009 को प्रार्थी द्वारा अपने दावे का अभिकथन प्रस्तुत किया गया। जिसके संक्षिप्त तथ्य इस प्रकार हैं। प्रार्थी श्रमिक की प्रथम नियुक्ति अप्रार्थी के अधीन एवं नियन्त्रण में दैनिक वेतनभोगी वाटरमैन के पद पर दिनांक 15.04.04 को हुई। नियुक्ति तिथि से 9.7.2004 तक प्रार्थी कोटपुतली ब्रान्च में कार्यरत रहा तथा उसके बाद 13.7.2004 से दिनांक 30.09.2004 तक चौमू ब्रान्च में कार्यरत रहा। अप्रार्थी प्रबन्धक द्वारा प्रार्थी की सेवायें दिनांक 30.09.2004 को बिना नोटिस दिये अकारण समाप्त कर दी गई। सेवासमाप्ति के पूर्व अप्रार्थी ने कोई वरिष्ठता सूची नहीं बनाई और न ही प्रकाशित की। जबकि प्रार्थी से कनिष्ठ श्रमिक अप्रार्थी के अधीन कार्य कर रहे थे। इस लिये अधिनियम की धारा 25 (जी) के अन्तर्गत सेवासमाप्ति अवैध घोषित की जायें। अप्रार्थी ने

अप्रैल 2005 में रामेश्वर गुर्जर निवासी रूपपुरा फतेहपुर खुर्द को नियुक्त किया। प्रार्थी ने अपनी सेवासमाप्ति का विवाद सहायक क्षेत्रीय श्रमायुक्त (केन्द्रीय) जयपुर के समक्ष प्रस्तुत किया लेकिन समझौता नहीं हुआ। असफल वार्ता प्रतिवेदन प्रेषित किये जाने पर भी श्रम मन्त्रालय ने विवाद को न्यायनिर्णयन हेतु नहीं भेजा। जिस पर प्रार्थी ने माननीय राजस्थान उच्च न्यायालय में रिट याचिका प्रस्तुत की, तब माननीय राजस्थान उच्च न्यायालय द्वारा पारित आदेश के अनुपालन में केन्द्र सरकार ने यह विवाद न्यायनिर्णयन हेतु प्रेषित किया। प्रार्थी सेवामुक्ति की तिथि से बेरोजगार है। अतः सेवासमाप्ति का आदेश निरस्त करते हुए सवैतनिक सभी परिलामों सहित प्रार्थी को सेवा में लिये जाने का आदेश दिया जावे।

4. दिनांक 19.8.2010 को विपक्षी ने प्रतिउत्तर में दावे को अस्वीकार किया। विपक्षी का कथन है कि प्रार्थी को अंशकालीन अस्थायी वेतनभोगी के रूप में वाटरमैन के पद पर नियुक्त किया गया। अधिनियम के प्रावधान प्रार्थी के सम्बन्ध में प्रभावी नहीं है। प्रार्थी ने विपक्षी की कोटपुतली एवं चौमूं ब्रान्च को पक्षकार नहीं बनाया है। विवाद को अत्यधिक देरी से उठाया है। प्रेषित किया गया विवाद अवैध है। प्रार्थी की नियुक्ति 15.4.2004 से 9.7.2004 तक एक निश्चित अवधि के लिये की गई थी। इस अवधि के पश्चात प्रार्थी की सेवा स्वतः समाप्त हो गयी। प्रार्थी का नाम रोजगार कार्यालय से लिया जाने के कारण साक्षात्कार लिया गया और विपक्षी की शाखा चौमूं में 13.7.2004 से 30.9.2004 तक की निश्चित अवधि हेतु कार्य पर रखा गया। प्रार्थी ने यह तथ्य छुपाया कि वह पहले भी विपक्षी की सेवा में कार्यरत रहा है। निश्चित समय हेतु नियुक्ति किये जाने से अधिनियम की धारा 2 (oo) (bb) के अन्तर्गत ऐसी नियुक्ति को छंटनी नहीं कहा जाता। निश्चित अवधि के उपरान्त सेवा स्वतः समाप्त हो जाती है। विपक्षी द्वारा प्रार्थी की सेवा कभी समाप्त नहीं की गई और न ही अधिनियम की धारा 25 (जी) का उल्लंघन किया गया। वरिष्ठता सूची के प्रकाशन का कोई आधार ही उत्पन्न नहीं हुआ। गर्मी के मौसम में पानी पिलाने एवं कूलरों में पानी भरने के लिये अंशकालीन वाटरमैन रखे जाते हैं। यह व्यवस्था केवल गर्मी के लिये ही की जाती है अतः प्रार्थी द्वारा प्रस्तुत वाद निरस्त किया जावे।

5. प्रार्थी की ओर से अतिरिक्त कथन दिनांक 14.10.2010 को प्रस्तुत किया गया। इन कथनों में वादोत्तर में किये गये कथनों को प्रार्थी ने अस्वीकार किया और अधिनियम की धारा 2 (oo) (bb) से यह विवाद आवृत्त न होना कहा।

6. तत्पश्चात प्रार्थी ने अपनी साक्ष्य में स्वयं प्रार्थी नरेश कुमार यादव को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श डब्ल्यू-1 से डब्ल्यू-7 तक प्रलेख प्रदर्शित किये।

7. विपक्षी ने अपनी साक्ष्य में श्री अवनी कुमार जैन मैनेजर (लीगल) को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श एम-1 और एम-2 प्रलेखों को प्रदर्शित किया।

8. दिनांक 23.12.2019 को मैंने उभयपक्ष के अभिभाषकगण के तर्क सुने तथा प्रस्तुत किये गये न्यायिक दृष्टान्तों में पारित विधि पर उपलब्ध साक्ष्य के सन्दर्भ पर मनन किया।

9. प्रार्थी के प्रतिनिधि का यह तर्क है कि इस विवाद में अधिनियम की धारा 25 (एफ) के अन्तर्गत छंटनी से सम्बन्धित प्रावधान प्रयोज्य नहीं है क्योंकि प्रार्थी ने विपक्षी के अधीन 240 दिन से अधिक सेवा नहीं की है। प्रार्थी ने मात्र 15.4.2004 से 30.9.2004 तक विपक्षी की कोटपुतली और चौमूं ब्रान्च में लगातार कार्य किया है। प्रार्थी को अकारण सेवा से पृथक कर दिया गया है जबकि प्रार्थी से कनिष्ठ रामेश्वर प्रसाद गुर्जर निवासी ग्राम रूपपुरा को उसी पद पर नई नियुक्ति दे दी गई। इसके अतिरिक्त नीरज कुमार, पूरण मल, राकेश आर्य व लालचन्द मीणा को भी नियुक्ति दी गई, जो प्रार्थी से कनिष्ठ थे लेकिन प्रार्थी को कोई वरीयता नहीं दी गई। प्रार्थी ने अपने सशपथ कथनों को पुष्ट करते हुए अपना पक्ष प्रमाणित किया है। प्रदर्श डब्ल्यू-4 चपरासियों की नियुक्ति हेतु विपक्षी के कार्यालय से जारी विज्ञप्ति है। इससे यह स्पष्ट है कि चतुर्थ श्रेणी संवर्ग में पद रिक्त रहे हैं लेकिन प्रार्थी को फिर भी नियुक्ति नहीं दी गई है। इस प्रकार अधिनियम की धारा 25 (जी) एवं (एच) के प्रावधानों का उल्लंघन प्रमाणित होता है। अपने तर्क के समर्थन में प्रार्थी ने निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये।

- (1) (2015) 4 (सुप्रीम कोर्ट कैसेज) 458 जसमेर सिंह बनाम स्टेट आफ हरियाणा व अन्य
- (2) आर.एल.आर. 2001 (1) 154 रामगोपाल सैनी बनाम जज लेबर कोर्ट-2 जयपुर व अन्य
- (3) 2010 -C.D.R. 401 (सुप्रीम कोर्ट) हरजिन्दर सिंह बनाम पंजाब स्टेट वेयर हाउसिंग कॉर्पोरेशन
- (4) (1996) 5 (सुप्रीम कोर्ट कैसेज) 419 सेन्ट्रल बैंक आफ इण्डिया बनाम एस. सत्यम व अन्य।
- (5) आर.एल.आर. 1991(2) 691 सूर्यप्रकाश शर्मा बनाम राजस्थान टेक्सट बुक्स बोर्ड, जयपुर व अन्य
- (6) आर.एल.आर. 1991 (2) 158 ओरियन्टल बैंक ऑफ कामर्स बनाम पी.ओ. सीजीआईटी व अन्य

10. विपक्षी के अधिवक्ता ने अपने तर्कों में यह कहा है कि प्रार्थी द्वारा शाखा प्रबन्धक कोटपूतली एवं चौमूं को पक्षकार न बनाने से यह वाद निरसनीय हो जाता है। प्रार्थी ने प्रदर्श एम-1 और एम-2 प्रलेखों को स्वीकार करते हुए यह मान लिया है कि उसकी नियुक्ति 85 दिन के लिये प्रथम बार के लिये हुई थी और उसके बाद पुनः 85 दिन के लिये प्रार्थी ने निश्चित अवधि के लिये नियोजन स्वीकार करते हुए यह तथ्य छुपा लिया कि वह 15.4.2004 से 9.7.2004 तक पहले ही विपक्षी के अधीन वाटरमैन के पद पर कार्य कर चुका है। यदि प्रार्थी इस तथ्य को प्रकट कर देता तो उसे 13.7.2004 से चौमूं शाखा में कार्य पर लगाया ही नहीं जाता। उनका यह प्रबल तर्क है कि अधिनियम की धारा 2 (oo) (bb) के प्रावधानों के अन्तर्गत निश्चित अवधि एवं सीमित कार्य के लिये प्रार्थी की नियुक्ति होने से उक्त अवधि एवं प्रयोजन समाप्त हो जाने पर प्रार्थी की सेवा स्वतः समाप्त हो जाती है और वह छंटनी नहीं मानी जा सकती। चूंकि उसकी सेवा अधिनियम की धारा 2 (oo)(bb) के प्रावधान के अन्तर्गत स्वतः समाप्त हुई है इसलिये छंटनी के अभाव में अधिनियम की धारा 25 (जी) और (एच) के प्रावधान स्वतः ही आकृष्ट नहीं होते क्योंकि इन प्रावधानों के प्रयोजन के लिये कर्मकार की छंटनी होना अपेक्षित होता है। इसलिये विपक्षी का प्रार्थी के सम्बन्ध में किसी वरीयता सूची का संधारण किया जाना आवश्यक ही नहीं था। उन्होंने प्रार्थी नरेश कुमार की प्रतिपरीक्षा में किये गये कथनों का उल्लेख करते हुए यह कहा है कि प्रार्थी स्वीकार करता है कि बिना लिखित आदेश के एक शाखा से दूसरी शाखा में स्थानान्तरण नहीं हो सकता। स्थानान्तरण का कोई आदेश जारी नहीं हुआ। इस प्रकार यह स्पष्ट है कि प्रार्थी को दो बार में अस्थायी नियुक्ति दी गई थी जो निश्चित अवधि के लिये ही थी। प्रार्थी यह भी स्वीकार करता है कि चौमूं शाखा में उसके साथ वाटरमैन के पद पर और कोई कार्यरत नहीं था तथा सेवासमाप्ति के एक सप्ताह के अन्दर किसी अन्य व्यक्ति को वाटरमैन के पद पर नहीं लगाया। प्रार्थी की ओर से कथित कनिष्ठ व्यक्तियों को सेवा में रखे जाने के प्रमाणस्वरूप नियुक्ति पत्र भी प्रस्तुत नहीं किये गये। प्रार्थी यह भी मानता है कि अन्य अभ्यर्थियों की पात्रता के बराबर उसकी पात्रता नहीं थी। इस प्रकार प्रार्थी का दावा किसी प्रकार स्वीकार्य नहीं है। विपक्षी ने अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये:-

- (1) 2007 (1) एस.एल.आर. 542 (सुप्रीम कोर्ट) भोगपुर कॉपरेटिव शुगर मिल लि. बनाम हरमेश कुमार
- (2) 2013 (138) एफ.एल.आर. 923 (सुप्रीम कोर्ट) भावनगर म्यूनिसिपल कॉर्पोरेशन बनाम सलीम भाई उमर भाई मन्सूरी
- (3) ए.आई.आर. 2019 (सुप्रीम कोर्ट) 228 मैनेजमेन्ट ऑफ दी बरारा कॉआपरेटिव मार्केटिंग कम प्रोसेसिंग सोसायटी लि. बनाम वर्कमेन प्रताप सिंह

11. उभयपक्ष के तर्कों, साक्ष्य एवं न्यायिक दृष्टान्तों में प्रतिपादित विधि पर मनन के उपरान्त निम्नलिखित विचारणीय बिन्दु उत्पन्न हुए हैं :-

बिन्दु संख्या 1 :-क्या दिनांक 30.09.2004 को प्रार्थी की सेवासमाप्ति करते समय प्रार्थी से कनिष्ठतर श्रमिक कार्यरत थे किन्तु विपक्षी द्वारा कोई वरिष्ठता सूची नहीं बनाई गई और नवनियुक्तियां करते समय प्रार्थी को वरीयता नहीं दी गई?.....
.. प्रार्थी

बिन्दु संख्या 2 :-क्या प्रार्थी दिनांक 13.07.2004 से 9.7.2004 तक तथा 13.7.2004 से 30.9.2004 तक निश्चित अवधि के लिये विशेष प्रयोजन से विपक्षी द्वारा नियोजित किया गया? इसलिये अधिनियम की धारा 2 (oo)(bb) के प्रावधानों के अन्तर्गत यह सेवासमाप्ति छंटनी नहीं है तथा प्रार्थी को अधिनियम की धारा 25 (जी) और (एच) के प्रावधानों का संरक्षण प्राप्त नहीं है?.....अप्रार्थी/विपक्षी

बिन्दु संख्या 3 :-अनुतोष ?

विचारणीय बिन्दु संख्या 1 :-इस बिन्दु के सम्बन्ध में प्रार्थी नरेश कुमार यादव ने अपने सशपथ कथन में यह कहा है कि अप्रार्थी ने उसकी सेवासमाप्ति से पूर्व कोई वरिष्ठता सूची नहीं बनाई और न ही प्रकाशित कीं। सेवासमाप्ति से पूर्व उसके समकक्ष प्रकृति के कार्य व पद पर अनेकों जूनियर श्रमिक कार्य कर रहे थे। अप्रार्थी नियोजक वरिष्ठता सूची बनाते तो स्पष्ट हो जाता। जूनियर श्रमिकों की नियुक्ति सम्बन्धित दस्तावेज अप्रार्थी के अधिकार व नियन्त्रण में है। “प्रार्थी ने यह भी कहा है कि 2005 में रामेश्वर गुर्जर पुत्र श्री सुगाराम चौलावा ग्राम रूपपुरा फतेहपुरा खुर्द कोटपुतली जयपुर को उसी पद, स्थान व कार्य बाबत नई नियुक्ति दी गई।” किन्तु, अप्रार्थी द्वारा किये गये प्रतिपरीक्षण के दौरान प्रार्थी ने अपने शपथपत्र के विरोधीभासी एवं प्रतिकूल कथन करते हुए यह कहा है कि चौमूं में (सेवासमाप्ति का स्थान) उसके साथ वाटरमैन के पद पर उसके अतिरिक्त कोई और कार्यरत नहीं थे। दिनांक 30.09.2004 के बाद एक सप्ताह के अन्दर किसी अन्य व्यक्ति को वाटरमैन के पद पर नहीं लगाया था। प्रार्थी के इस कथन से कनिष्ठतर व्यक्तियों का

सेवासमाप्ति के समय कार्यरत रहने का तथ्य खण्डित हो जाता है। अन्य श्रमिकों के कार्यरत न होने के कारण विपक्षी द्वारा ऐसे श्रमिकों की वरिष्ठता सूची तैयार करने एवं प्रकाशित करने की आवश्यकता भी समाप्त हो जाती है।

12. प्रार्थी, रामेश्वर प्रसाद गुर्जर को कोटपूतली ब्रान्च में नियोजित करना तो कहता है किन्तु उसकी नियुक्ति तिथि याद नहीं होने के कारण बताने में असमर्थ रहा है। प्रार्थी नरेश कुमार ने उसका कोई नियुक्ति पत्र भी साक्ष्य में प्रदर्शित नहीं किया है, न ही विपक्षी से प्रस्तुत करवाने हेतु कोई निवेदन अधिकरण से किया है। प्रार्थी ने अपने दावे के अभिकथन में उन व्यक्तियों के नाम वर्णित नहीं किये हैं जिन्हें प्रार्थी की सेवासमाप्ति के पश्चात नियुक्ति दी गई हो किन्तु अपने शपथपत्र के चरण संख्या 14 में प्रार्थी ने 4 व्यक्तियों के नाम भी वर्णित कर दिये हैं जिन्हें सेवासमाप्ति के बाद विपक्षी द्वारा नियोजित किया गया लेकिन प्रार्थी ने इन व्यक्तियों के नियुक्ति पत्र न तो स्वयं प्रस्तुत किये और न ही विपक्षी से प्रस्तुत करवाने का कोई निवेदन किया। इस स्थिति में प्रथम तो, अभिवचनों के अभाव में प्रार्थी की साक्ष्य की ग्राह्यता सम्भव नहीं है। दूसरे, इन व्यक्तियों को विपक्षी द्वारा नियुक्त किये जाने का कोई प्रलेखीय प्रमाण भी विद्यमान नहीं है। प्रार्थी द्वारा ही प्रस्तुत निर्णय रामगोपाल सैनी बनाम जज लेबर कोर्ट नं. 2 जयपुर व अन्य में माननीय राजस्थान उच्च न्यायालय की खण्डपीठ ने यह अधिमत व्यक्त किया है कि जब प्रार्थी किसी प्रलेखीय साक्ष्य से नियोजक द्वारा अधिनियम की धारा 25 (जी) और (एच) के प्रावधानों का उल्लंघन करना प्रमाणित करने में विफल रहा हो तो मात्र कर्मकार की सेवासमाप्ति के पश्चात नियोजक द्वारा नियुक्त किये गये कनिष्ठ व्यक्तियों के नाम का उल्लेख मात्र करने से उद्देश्य की पूर्ति नहीं होती है। इन निर्णय में पारित विधि के प्रकाश में कनिष्ठ व्यक्तियों के नाम का उल्लेख मात्र करना यह प्रमाणित करने को पर्याप्त नहीं है कि विपक्षी ने प्रार्थी से कनिष्ठ व्यक्तियों को प्रार्थी की सेवासमाप्ति के उपरान्त नियोजन में रखा हो।

13. प्रार्थी यह भी स्वीकार करता है कि शपथपत्र के पेरा संख्या 15 में जिन व्यक्तियों से आवेदन आमंत्रित किये जाने की बात लिखी है उन व्यक्तियों की पात्रता की तुलना में उसकी (प्रार्थी) पात्रता नहीं थी क्योंकि प्रार्थी ने विपक्षी के अधीन 5 वर्ष की अवधि तक सेवा नहीं की। साक्ष्य की इस स्थिति में प्रार्थी यह प्रमाणित करने में नितान्त विफल रहा है कि सेवासमाप्ति की तिथि 30.09.2004 को प्रार्थी से कनिष्ठतर किसी श्रमिक को विपक्षी ने सेवा में नियोजित रखते हुए प्रार्थी की सेवासमाप्ति की हो। क्योंकि प्रार्थी स्वयं ने यह स्वीकार किया है कि उसके अतिरिक्त और कोई वाटरमैन के पद पर सेवासमाप्ति के समय कार्यरत नहीं थे। इसलिये वरीयता सूची के प्रकाशन का कोई अवसर व औचित्य नहीं रहता है। प्रार्थी स्वयं ही यह भी मानता है कि जिन व्यक्तियों ने बाद में नियुक्ति हेतु आवेदन किया उनके समान उसकी पात्रता भी नहीं थी। इसलिये प्रार्थी को नियुक्ति में वरीयता दिये जाने का औचित्य व आधार भी समाप्त हो जाता है।

14. प्रार्थी की और से प्रस्तुत निर्णय जसमेर सिंह बनाम स्टेट आफ हरियाणा व अन्य में माननीय उच्चतम न्यायालय ने यह कहा है कि जब श्रमिक ने नियोजक के अधीन विभिन्न उपखण्डों में कार्य किया हो तथा नियोजक व सेवासमाप्ति प्राधिकारी समान ही हो तो कर्मकार की सेवा अवधि सभी उपखण्डों की समेकित मानी जावेगी, प्रार्थी के पक्ष में सहायक नहीं है, क्योंकि अधिनियम की धारा 25 (एफ) के प्रावधानों के अन्तर्गत 240 दिन से अधिक की सेवा की संगणना किये जाने हेतु प्रार्थी का कोई मामला ही नहीं है।

15. प्रार्थी द्वारा अवलम्बित निर्णय हरजिन्दर सिंह बनाम पंजाब स्टेट वेयर हाउसिंग कॉर्पोरेशन तथा सेन्ट्रल बैंक आफ इण्डिया बनाम एस.सत्यम व अन्य में माननीय उच्चतम न्यायालय ने यह मार्गदर्शन दिया है कि अधिनियम की धारा 25 (जी) के अन्तर्गत "पहले आना अन्त में जाना" के सिद्धान्त के सन्दर्भ में कर्मकार को यह सिद्ध नहीं करना होता है कि सेवासमाप्ति के पूर्व एक कैलेंडर वर्ष की अवधि में वह 240 दिन की सेवा पूर्ण कर चुका है।

16. इसी प्रकार माननीय राजस्थान उच्च न्यायालय ने अपने निर्णय सूर्यप्रकाश शर्मा बनाम राजस्थान टेक्सट बुक्स बोर्ड, जयपुर व अन्य तथा ओरियन्टल बैंक ऑफ कामर्स बनाम पी.ओ. सीजीआईटी व अन्य में यह कहा है कि अधिनियम की धारा 25 (एच) के प्रावधान सभी प्रकार की छंटनी पर प्रभावी है। मात्र धारा 25 (एफ) सहपठित धारा 25 (बी) के अन्तर्गत ही 240 दिन की सतत सेवा प्रमाणित किया जाना आवश्यक है। चूंकि प्रार्थी धारा 25 (जी) व 25 (एच) अधिनियम के अंतर्गत आवश्यक तथ्यों को अपने साक्ष्य से प्रमाणित नहीं कर सका है इसलिये इन निर्णयों में प्रतिपादित विधि प्रार्थी के पक्ष में सहायक नहीं है।

17. जहाँ तक विपक्षी के इस तर्क का प्रश्न है कि कोटपूतली व चोमू के शाखा प्रबंधकों को पक्षकार न बनाये जाने से वाद पोषणीय नहीं है, एक स्वीकार्य तर्क नहीं है क्योंकि विपक्षी साक्षी ने स्वीकार किया है कि वरिष्ठ मंडल प्रबंधक का प्रशासनिक नियंत्रण सभी ब्रांचों पर रहता है। इस स्थिति में वरिष्ठ मंडल प्रबंधक को पक्षकार के रूप में संयोजित करने पर इस विवाद का न्याय निर्णय सुगमता से किया जा सकता है।

18. साक्ष्य एवं विधि के इस विवेचन के पश्चात यह विचारणीय बिन्दु प्रार्थी के विरुद्ध विनिश्चित किया जाता है।
19. विचारणीय बिन्दु संख्या 2 — इस बिन्दु के सन्दर्भ में विपक्षी के साक्षी श्री अवनी कुमार जैन ने अपने कथन में यह कहा है कि प्रार्थी को गर्मी में कूलरों आदि में पानी भरने के आकस्मिक कार्य के लिये 85 दिन के लिये सेवा में रखा था। प्रार्थी ने सेवा शर्तें स्वीकार की थी और कार्य किया था। प्रार्थी ने नियुक्ति आदेशों को पढ़ एवं समझकर 85—85 दिन के लिये नियोजन स्वीकार किया था। अधिनियम की धारा 2 (oo)(bb) के अन्तर्गत प्रार्थी की सेवासमाप्ति अनुबन्ध की अवधि के समापन के कारण हुई हैं जो छंटनी नहीं है।
20. प्रार्थी का यह तर्क है कि विपक्षी ने दिनांक 13.7.2004 से 30.9.2004 तक निश्चित अवधि के लिये प्रार्थी को नियुक्त किया जाना किसी साक्ष्य से प्रमाणित नहीं किया है, एक स्वीकार्य तर्क नहीं है क्योंकि जिस तथ्य को प्रतिपक्षी स्वीकार कर चुका हो उसे प्रमाणित करने के लिये किसी साक्ष्य का प्रस्तुत किया जाना आवश्यक नहीं है। प्रार्थी नरेश कुमार ने अपने प्रतिपरीक्षण में यह स्वीकार किया है कि प्रदर्श एम-2 उसकी ज्वाइनिंग रिपोर्ट है जिस पर उसने अच्छी तरह पढ़ व समझकर हस्ताक्षर किये हैं। प्रदर्श एम-2 में प्रार्थी ने दिनांक 12.7.2004 को अर्थात् दिनांक 13.7.2004 को विपक्षी की शाखा चौमूं में कार्यग्रहण करने के पूर्व यह लिखा है कि " अब मैं जलसेवक (दिहाड़ीदार) के पद पर 85 दिन के लिये अस्थायी रूप से जलसेवक के पद पर कार्य करने के लिये अपनी सहमति देता हूँ।" प्रार्थी ने यह ज्वाइनिंग रिपोर्ट, प्रदर्श एम-1 साक्षात्कार हेतु आमंत्रण पत्र दिनांक 30.6.2004 के प्रतिउत्तर में दी है। इस प्रकार दिनांक 13.7.2004 से 85 दिन की निश्चित अवधि के लिये प्रार्थी द्वारा सहमति देना, भलीभांति प्रमाणित है। दिनांक 15.4.2004 से 09.7.2004 तक विपक्षी की कोटपूतली ब्रान्च में निश्चित अवधि तक नियोजित होना एक स्वीकृत स्थिति है। प्रार्थी ने अपनी साक्ष्य से कोटपूतली ब्रान्च से शाखा चौमूं में 85 दिन के पूर्व ही स्थानान्तरण हो जाने का कोई लिखित प्रमाण प्रस्तुत नहीं किया है जबकि प्रार्थी यह स्वीकार करता है कि स्थानान्तरण के लिये लिखित आदेश होना आवश्यक है। प्रार्थी द्वारा कोटपूतली ब्रान्च में दिनांक 9.7.2004 तक कार्य करने का तथ्य अपनी शाखा चौमूं में की गई नियुक्ति के समय सूचित नहीं किया गया किन्तु इस तथ्य को छुपाने का क्या प्रभाव है, यह विवेचित किया जाना इस विवाद से सम्बन्धित न होने से आवश्यक नहीं है।
21. इस प्रकार 85 दिन की निश्चित अवधि हेतु जल सेवक के अस्थायी दैनिक वेतनभोगी पद पर प्रार्थी की नियुक्ति किया जाना साक्ष्य से प्रमाणित है।
22. विपक्षी की ओर से इस सम्बन्ध में माननीय सर्वोच्च न्यायालय द्वारा भोगपुर कॉर्पोरेटिव शुगर मिल लि. बनाम हरमेश कुमार तथा भावनगर म्यूनिसिपल कॉर्पोरेशन बनाम सलीम भाई उमर भाई मन्सुरी के प्रकरणों में पारित निर्णयों का अवलम्ब लिया गया है। इन निर्णयों में माननीय उच्चतम न्यायालय ने यह मागदर्शन दिया है कि जहां कर्मकार मौसमी कार्य हेतु नियोजित किया गया हो तथा उसने 240 दिन का कार्य पूर्ण नहीं किया हो। तत्पश्चात उसे आगामी मौसम में नियुक्ति दी गई हो तथा कनिष्ठ व्यक्तियों को सेवा में बनाये रखा गया हो, तो इसमें कोई अवैधता नहीं है। संविदा के नवीनीकृत न किये जाने के कारण सेवा का समापन अधिनियम की धारा 2 (oo)(bb) के अन्तर्गत छंटनी की परिभाषा को आकृष्ट नहीं करता है।
23. इसी क्रम में मैनेजमेन्ट आफ द बरारा कॉर्पोरेशन मार्केटिंग कम प्रोसेसिंग सोसायटी लि. बनाम वर्कमेन प्रताप सिंह के निर्णय में माननीय सर्वोच्च न्यायालय ने यह स्पष्ट कर दिया है कि अधिनियम की धारा 25 (एच) के प्रावधानों का उद्देश्य छंटनी किये गये कर्मकारों को नियोजन में वरीयता देना है। इसलिये कर्मकार को इस प्रावधान का संरक्षण लेने के पूर्व यह प्रमाणित करना होगा कि वह एक छंटनी किया गया कर्मकार है।
24. माननीय उच्चतम न्यायालय के इन निर्णयों में पारित अधिमत से यह दिशा निर्देश मिलता है कि निश्चित अवधि के लिये नियोजित कर्मकार की सेवा, अनुबन्ध की अवधि समाप्त हो जाने पर स्वतः समाप्त हो जाती है तथा ऐसी सेवासमाप्ति अधिनियम की धारा 2 (oo)(bb) के प्रावधानों के अनुसार छंटनी की परिभाषा में नहीं आती। चूंकि प्रार्थी ने 85 दिन की निश्चित अवधि के लिये एक प्रयोजन विशेष से, सेवा में आने की सहमति दी थी, इसलिये उक्त अवधि के समापन पर प्रार्थी की सेवा स्वतः समाप्त हुई। यह सेवासमाप्ति अधिनियम की धारा 2 (oo)(bb) के प्रावधान के अनुसार छंटनी नहीं है। छंटनी की परिभाषा में न आने से प्रार्थी को अधिनियम की धारा 25 (जी) एवं (एच) के प्रावधानों का संविधिक संरक्षण भी प्राप्त नहीं है। इस विवेचन के उपरान्त यह विचारणीय बिन्दु विपक्षी के पक्ष में विनिश्चित किया जाता है।
- विचारणीय बिन्दु संख्या 3 :-**विचारणीय बिन्दु संख्या 1 प्रार्थी के विरुद्ध एवं विचारणीय बिन्दु संख्या 2 अप्रार्थी/विपक्षी के पक्ष में विनिश्चित किये जाने के कारण यह स्पष्ट है कि दिनांक 30.09.2004 को प्रार्थी की सेवासमाप्ति अधिनियम की धारा 2 (oo)(bb) के प्रावधानों के अन्तर्गत निश्चित अवधि एवं सीमित उद्देश्य के लिये थी, जो छंटनी होना नहीं पाई

गई है। इसलिये प्रार्थी अधिनियम की धारा 25 (जी) एवं (एच) के अंतर्गत प्रदत्त संरक्षण को प्राप्त करने का अधिकारी नहीं है। प्रार्थी कोई अनुतोष विपक्षी से पाने का भी अधिकारवान् प्रमाणित नहीं होता है।

25. श्रम मन्त्रालय भारत सरकार द्वारा इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

26. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 17 मार्च, 2020

का.आ. 386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ऑयल इण्डिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 07/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.03.2020 को प्राप्त हुआ था।

[सं. एल-30011/22/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2017) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Oil India Limited, and their workman, which was received by the Central Government on 06.03.2020.

[No. L-30011/22/2017-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B. Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 07 of 2017

In the matter of an Industrial Dispute between :-

Oil India Pipeline Mazdoor(C) Union, Guwahati.

...Claimant/ Union

-Vrs-

The Management of Oil India Ltd., Guwahati & 02 Ors.

O. Ps/Management

APPEARANCES :

For the Workmen. : Mr. J.K.Kar, Advocate.

Mr. H.K.Dey, Advocate.

For the Management. : Mr. S.N.Sharma, Sr. Advocate,

Mr. M.Hussain, Advocate.

For M/s. Omega Security Solutions

(Prop), Oil India Contractor, : Mr. R. Senu, Advocate.

Date of Award: 25.02.2020

AWARD

1. This reference case was registered in this Tribunal on receipt of a notification dated 05.07.2017 from the appropriate Government, that is, Government of India with the following Schedule:

“Whether the action of the management of M/s. Van Guard Security Services and M/s. Omega Security Services and System, Contractors of Oil India Ltd., in terminating the services of 13 contract labours (as per list enclosed) without following the procedure as laid down Under Section 25F of I.D. Act, 1947 is legal justified. If not, to what relief the workmen are entitled to and from which date?”

2. Thereafter, notices were issued to the concerned parties. Workman side, management of Oil India and M/S Omega Security Services and System appeared and submitted their respective written statements.

3. **Brief summary of the written statement of the workmen side:-** Thirteen (13) workers referred in the schedule of the reference had been engaged in M/s. Oil India Limited, at the Centre of Excellence for Energy Studies at Guwahati in security related jobs through different contractors. They had been discharging duties to the satisfaction of all concerned. Initially M/s. Van Guard Security Services was the contractor but suddenly M/s. Omega Security Services and System replaced it. M/S Omega Security Services and System denied to continue with the engagement of the concerned workers and such denial, according to the workers, amounted to their termination without any notice or compensation either by M/s. Van Guard Security Services or by the principal employer under whom the workers were working till 31.08.2016. It was further stated that the basic purpose of the aforesaid contract was to give employment to a new set of workers by denying employment to the concerned workers. On 01.09.2016 a group of new persons were engaged in place of the concerned workers. But, the principal employer remained silent spectator without paying any heed to the claim of the concerned workers. The matter was thereafter taken up by the concerned Trade Union but nothing fruitful happened. M/s. Van Guard Security Services under which the concerned workers were working did not serve any notice of termination nor did pay any compensation to them. M/s. Omega Security Services and System, the new contractor, also did not reengage them. Ultimately the matter was taken before the Regional Labour Commissioner(C), Guwahati and conciliation proceeding was held. When conciliation proceeding ended without any fruitful result, the Conciliation Officer sent the “conciliation failure” report to the appropriate Government and the appropriate Government referred the matter to this Tribunal.

4. **Brief summary of the written statement of the management of OIL Ltd:-** The management of Oil India Ltd (Pipe Line Division) stated that the concerned 13 contract labourers were engaged by the contractor and at no point of time there existed any direct employer and employee relationship between the Oil India Ltd and the concerned workers. It was further stated that the service condition of the 13 contract labourers were governed by the Contract Labour (Regulation & Abolition) Act, 1970 and accordingly no Industrial Dispute in respect of these contract labourers with principal employer is maintainable. According to the management of Oil India the reference of the appropriate Government was whether the two contractors named in the order of reference were justified in terminating the 13 concerned contract labourers without following the Section 25F of the Industrial Disputes Act was justified and therefore the management of Oil India Limited was in any case should not be treated as a party to this reference. It was further stated that the contract was awarded to the respective contractors namely/Ms. Vanguard Security Services & System and M/s. Omega Security Solutions by the management of Oil India Limited after floating tender. At the time of entering into the contract, agreement was made between the management of Oil India and the concerned contractor providing for minimum wages, holidays and PF subscriptions as per prevailing rules/laws. In any case the concerned workers were engaged by the contractor and they were never the direct employees of the Oil India Ltd. It was further stated that discharging and assigning job to the concerned workers were duties of the concerned contractor and not of the Oil India Ltd. It was also stated the contractors were at liberty to engage contract labourers selected or chosen by them at any point of time. Oil India Ltd. further stated that the company engaged contractor for performing certain jobs but the contractor was liberty to choose the contract labours. It was further stated that contract labour was not a workman as defined under Section 2(s) of the I.D.Act, 1947 as contract labour is already defined under CLRA Act and their service conditions are governed by the said CLRA Act. In the concluding part of the written statement, Oil India Limited prayed for quashing the order of reference so far as it relates to the management of Oil India Ltd.

5. **Brief summary of written statement submitted by Opposite party No.3 i.e. M/s. Omega Security Solutions:-** It was stated that in pursuance to an advertisement by the Oil India Ltd they submitted a tender for

executing certain works and on 17.08.2016 contract was awarded to them hiring their security services for a period of 3 years which was extendable by another one year subject to the satisfactory service. It was thereafter brought to the notice of the answering opposite party that 15 numbers of security guards, who were earlier engaged by the predecessor contractor, have been claiming employment with the answering opposite party. The OP then informed the concerned workers to visit their office for fulfillment of necessary formalities. But, only two numbers of workers from among the original group of 15, visited the office of the concerned contractor and they were engaged. The remaining 13 workers declined the offer and contended that they are seeking employment from the management of Oil India Ltd. It was also stated that there was no question of terminating the services of the concerned workers by them and the entire reference was misconceived. It was also stated that the answering opposite party No.3 have been performing the service as per the contract obligation with the Oil India Ltd. It may be noted here that the Opposite party M/s. Vanguard Security Services did not appear to contest the matter.

6. Meanwhile a petition was submitted by the workmen side to call for copies of certain agreements between the Oil India Ltd. and M/s. Omega Security Solutions and M/s. Vanguard Security Services. The management of Oil India fairly submitted that at that point of time if those agreements were available to them, they would have no objection to produce these before this Tribunal. It appears from the order dated 20.07.2018 that the management submitted certain documents on 22.06.2018 as per order dated 07.06.2018 passed by this Tribunal.

7. On 10.04.2019 the workmen side submitted examination in-chief on Affidavit of one witness Sri Soneswar Das who was later cross-examined by the Opposite Parties. Thereafter evidence in-chief on Affidavit of one witness namely Rajumoni Saikia was submitted on behalf of the management of Oil India Ltd and the witness was later-on cross-examined by the other parties. Ultimately argument was heard from the management of Oil India Ltd and the workman side. None appeared for other parties to argue the matter.

8. Workman Witness No.1 Sri Soneswar Das stated that he is one of the concerned worker being engaged as security Guard in the Centre of Excellence for Energy Studies, Guwahati under Oil India Ltd. He was engaged there for more than 5 years. He however admitted that intermediary agencies of his engagement were M/s. Veteran Security Services and M/s. Vanguard Security Services & Systems respectively. He stated that the wages were paid by the intermediary agencies but the actual control was of the management of OIL. He exhibited attendance register for certain month as Exhibit-1 and copy of affiliation of their Trade Union as Exhibit-2. He also stated that while he and other workers were continuing to render their services to the establishment, on 30.08.2016 they received a verbal call from M/s. Omega Security Services and Systems for interview at a distance place which they could not attend because of their engagement in their working place and on the next day they noticed that they have been replaced by some other workers. Immediately they brought the fact to the notice of the management and the management did nothing. Conciliation failed and thereafter the matter was referred. During his cross-examination by the management of Oil India Ltd he admitted that M/s. Veteran Security Services was first engaged as a Contractor with effect from 01.11.2012 and that he was first engaged by M/s. Veteran Security Services. He clearly admitted that on 01.11.2012 he was first engaged as contract worker by M/s. Veteran Security Services. He further admitted that after August 2014 M/s. Vanguard Security Services and Systems became the Contractor. He also admitted that up-to 31.08.2016 he worked for 3 years 7 months meaning thereby that he did not work as the contract labour in the establishment for five years or more. He also admitted that out of 15 contract labours, 2 have joined the service of M/s. Omega Security Services. He also admitted that he along with other concerned workers were offered contract job somewhere else by M/s. Omega Security Services. He exhibited the conciliation proceeding as Exhibit-3(A). The witness was also cross-examined by M/S Omega Security Service and during the cross-examination he stated that he sought reinstatement with Oil India Ltd.

9. Management witness No.1 Sri Rajumoni Saikia, Deputy General Manager (Technical and Administration) of Center of Excellence For Energy Studies of Oil India Limited situated at Guwahati, stated that after installation of various machineries in their premises initially M/s. Suraksha was engaged to provide 7 numbers of Security Personnel and the said agreement was signed on 09.06.2012 and later another Security Services Agency namely M/s. Veteran Security Services was given the contract from 01.11.2012 and the said Security Service Agency continued till August 2014. He further stated that thereafter M/s. Vanguard Security Services and System was given the contract. The Copy of the agreement with the related Security Agencies have been exhibited by him as Exhibits-A, B and C. Later another Security Agency Omega Security Services & Systems replaced M/s. Vanguard Security Services & Systems and the agreement of the Omega Security Services & Systems was exhibited as Exhibit-D. He further stated that security services provider were at liberty to engage their own security guards and the management had no hand on such selection by the service

provider. The supervision of the security guards and the power of disciplinary action, if any, were vested on the concerned contractor. He further stated that the wages etc. of the concerned workmen were also paid by the contractor as required under CLRA Act and Rules. He also stated that claim of the concerned workers of reinstatement with management of Oil India Ltd. was completely uncalled for and illegal. He also stated that admittedly the concerned workers were under M/s. Vanguard Security Services and not under Oil India Ltd. He also stated that the concerned workers cannot claim direct employment under principal employer. During cross-examination he admitted that they have machineries in their premises which required adequate securities and that engagement of security guard is a continuous process. He also admitted that the contractor raises bill for payment to the contract workers and they make payment to the contractor who in turn pay wages to the contract labourers. He further stated that the contractor is the custodian of the details of the contract workers and the wages were transferred to the Bank account of the concerned workers by the contractor. He also stated that when Omega Security replaced the earlier Contractor M/s. Vanguard Security Services, the Omega Security Services did not engage the concerned workers and some of the workers requested the management of Oil India to make arrangement of their engagement. He also stated that he then told the concerned workers that if they so desire they may contact the new contractor and ultimately two of them went to the contractor M/s. Omega Security Services and they were engaged by them.

10. The written argument submitted by the workmen side began with the claim the concerned workers were continuously engaged by the OIL for five years either directly or through contractor. On perusal of the evidence on record, as briefly narrated in the preceding paragraphs, it was absolutely clear that the management of OIL never engaged the concerned workers directly. They were engaged by the selected contractor and their wages etc were also paid by the concerned contractor. The above factual position was clearly admitted by the workman witness during his cross-examination. In view of the status of the concerned workers as contract labours for much less than five years, provisions of section 25F of the I. D. Act, 1947 did not appear to be applicable. Another admitted fact was that the last engaged contractor actually called the concerned workers to consider their further engagement as contract labours, but only 2 of them responded and they were engaged. The remaining, however, did not respond and thus not engaged.

11. During argument learned senior lawyer Mr. S. N. Sharma, assisted by learned advocate Mr. M. Hussain, appearing for the OIL precisely made the following points. Firstly, the concerned workers were admittedly contract labours engaged by the contractors with whom the OIL had valid agreements/contracts for doing certain specific security related works. Secondly, the wages of the workers were paid directly by the respective contractors and the workers were never on the payroll of the OIL. Thirdly, in view of the above two admitted facts the concerned workers cannot have any claim against the OIL and the reference itself is not maintainable. The learned senior counsel Mr. Sarma also relied upon two decisions- (a) "Director, SAIL, Ltd vs Ispat Khadan Janta Mazdoor Union" reported in (2019) 7 SCC 440 and (b) "Indian Oil Corporation Ltd vs Presiding Officer & others" reported in 1998 (2) GLT 67. In "Indian Oil Corporation Ltd" (Supra), Hon'ble Gauhati High Court held that when workers are engaged by contractors, there is no relationship of employer and employees between the principal employer and the contract labours.

12. Evidence on record clearly shows that respective contractor employed the contract labours and OIL was not the appointing authority. Evidence of the witnesses also clearly reveals that wages etc of the workers were paid by the contractors. There is clear evidence that the workers were engaged by contractors for much less than period of five years. The contract period of contractor M/s. Vanguard Security services, under which the workers were engaged, expired after the period of contract. There was therefore, no question of termination of the workers by the said contractor. The next contractor M/s. Omega Services & Solutions got the subsequent contract and they were very much within their rights to engage fresh set of workers. However, the contractor informed the workers (originally 15 in numbers) to report to their office if they were interested to be engaged. Two of the 15 workers reported to the contractor and they were engaged by the contractor. Remaining 13 workers did not report to the contractor and insisted to be employed by OIL. Clearly, the concerned workers had no automatic right of employment with the OIL. The contractors also did not appear to have committed any illegality. In view of the above the reference stands disposed of with a no relief award.

Given under the hand and seal of this Tribunal, this 25th day of February, 2020.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स केन्द्रीय भण्डारण निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 1/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.03.2020 को प्राप्त हुआ था।

[सं. एल-42011/5/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2018) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Central Warehousing Corporation, and their workman, which was received by the Central Government on 17.03.2020.

[No. L-42011/5/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** M. V. Deshpande, Presiding Officer**REFERENCE NO. CGIT-2/01 of 2018****EMPLOYERS IN RELATION TO THE MANAGEMENT OF
M/S. CENTRAL WAREHOUSING CORPORATION**

The Director (P),
M/s. Central Warehousing Corporation,
4/1, Siri Institutional Area, August Kranti Marg,
Hauz Khas, New Delhi – 110 016.

The Regional Manager,
M/s. Central Warehousing Corporation,
Sector – 20, Vashi,
Navi Mumbai – 400703.

AND**THEIR WORKMEN**

The General Secretary,
CWC Workers Union (Maharashtra),
Central Warehouse, Sector – 20,
Near APMC Fruit Market, Vashi,
Navi Mumbai – 400703.

APPEARANCES:

FOR THE EMPLOYER : Mr. Umesh Nabar, Advocate
FOR THE WORKMEN : Mr. J. H. Sawant, Advocate

Mumbai, dated the 17th February, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42011/5/2016 – IR (M) dated 04.01.2018. The terms of reference given in the schedule are as follows :

“Whether the action of the management of Central Warehousing Corporation, New Delhi is justified in issuing office order No. CWC/I-Estt./Manpower Rationalisation/Mum / 603A dated 13.10.2015 and partially modified with another office order No. CWC/I-Estt./Manpower Rationalisation/Mum / 324-A dated 12.11.2015. If not, to what relief the aggrieved workers are entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.
3. In view of pursis dated 17.02.2020 [Ex.10] the second party is not interested in pursuing the reference. Other side has no objection.
4. Hence reference is disposed of. Hence order.

ORDER

Reference is disposed of with no order as to costs.

Date: 17.02.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नॉर्थ ईस्ट रेफ्रिजेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 22/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.03.2020 को प्राप्त हुआ था।

[सं. एल-30012/1/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2016) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. North East Refrigeration, and their workman, which was received by the Central Government on 11.03.2020.

[No. L-30012/1/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD**

PRESENT : Dr. S. K. Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO. 22 OF 2016

PARTIES: : Sri Kanwar Kumar,
Vill: Keshawe, PO: Keshawe,
PS: Baraun, Distt: Begusarai,-851134
Bihar.

Vs.

The Proprietor,
M/s. North Eastern Refrigeration 124,
Rajgarh Road, GUWAHATI-781007.

Order No. L-30012/1/2016-IR (M) dt. 08.02.2016**APPEARANCES :**

On behalf of the workman/Union : None

On behalf of the Management : Mr. Vijay Kumar, Ld. Advocate

State : Jharkhand Industry :**Dated, Dhanbad, the 27th December, 2019****AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them 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-30012/1/2016-IR (M) dt 08.02.2016.**

SCHEDULE

“Whether the action of the employer M/s. North East Refrigeration a contractor of IOCL Refinery, Begusarai, to termination the services of the workman Sri Kanwar Kumar without observing the condition under Sec.25 (F) of the ID Act was correct? if not, what relief the workman Sri Kanwar Kumar is entitled for.”

On receipt of the Order No. **L-30012/1/2016-IR (M) dt. 08.02.2016** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 22 of 2016 on 18.02.2016 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

2. The Reference Industrial Dispute was finally heard on 27.11.2019 to deal with the matter of filing Written statement of Claim and for final order virtually on being default of the workman concerned (Petitioner) but none found to be present on call either from workman (petitioner) or from the Management. Nor did the workman could be able to file or make appearance for filing long awaited written Statement of Claim before the Tribunal to proceed further over hearing. Notices as appropriate were sent to the respective parties under reference under Regd. Post on dtt. 23.03.2016, 03.09.2019, and lastly 05.11.2019 but of no use.

3. On the other hand, Mr. Vijay Kumar, Ld. Counsel for Management appeared on previous date on 24.09.2019 before the Tribunal to file Authority to represent the case on behalf of the Management. Whereas Written Statement of Claim on the part of the Sponsoring Union/workman should have been filed within fifteen days of the receipt of the reference who raised the claim as stated in the Order of Reference from Government of India, which reads as follows:

“The Parties raising the dispute shall file a statement of claim complete with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such statement to each one of the opposite parties involved in this dispute under rule 10(b) of the Industrial Disputes (Central), Rules, 1957.”

4. In course of hearing the case was adjourned on, 27.04.2016, 28.06.2016, 16.08.2016, 18.10.2016, 29.06.2017, 29.08.2017, 24.09.2019 and finally on 27.11.2019, besides being placed for taking step on 18.02.2016, 05.12.2016, 25.01.2017, 15.03.2017, 09.05.2017, 12.10.2017, 30.11.2017 and 24.11.2019. However, as number as eight sittings were held during the entire proceedings of the case .

5. The proceedings of the Case record came to a grinding halt and persistent pressure by the way of short adjournments and Notices appears to be of no use , a move solely rest with the workman. Unarguably the case appears to be moving at snail's pace over the one step of filing the written statement of claim. All that was stated that parties concerned had not appeared before the Tribunal .In such an event the Tribunal cannot initiate suo moto proceedings due to lack of the workman's interest to file the Written Statement of claim . It had been summed up that full natural justice have been provided to the workman concerned to come out with Written Statement of claim providing ample opportunity during the hearings of the instant case by issuance of the Notice dtt. 23.03.2016, 03.09.2019, and lastly 05.11.2019 at the addresses of the both the litigant parties concerned but all went in vein.

6. Appearance from the O.P. /Management does not hold good so long the workman himself who raised the dispute do not appear with legitimate statement of claim before Tribunal for adjudication to let them be

countered by the O.P./Management. The Reference case as narrated under the Reference concerned with termination of services of the workman by the Management of M/s North East Refrigeration, a contractor of IOCL Refinery, Begusarai without compliance of the conditions under Sec. 25 (F) of the I.D. Act, an alleged action that was challenged by the workman (petitioner) by making Reference before this Tribunal for adjudication.

7. It needs no emphasis to say that facts of the matter and materials on record mentioned hereinabove points to fact that there is no confirmation of submission of the Written Statement of claim before the Tribunal during the entire proceedings of hearing of the Ref. Case spread over more than three and half years. It has been absolutely clear the issue under Reference ceases to exist either to have been absolved or no more in existence due to utter reluctance of the workman concerned with all sorts of help provided by the Tribunal.

8. Upon a careful perusal of the different materials available on record, it has been made clear that the Petitioner has not taken any step to proceed with the case although three notices were served upon even after more than thirteen short adjournments over the same issue. Such being the position the Tribunal find no scope to push the proceedings for an indefinite period of time for the end of justice. In the light of above fact and circumstance it has come to conclusion that the issue on which the case had been raised, in real terms has diluted and no more in existence. The dispute is disposed off accordingly as the workman as of day does not have grievance to be redressed from the Management and so no relief.

Dr. S.K.THAKUR, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स श्री पप्पुर तीर्थानी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 60/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.03.2020 को प्राप्त हुआ था।

[सं. एल-29011/53/2006-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2006) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Shri Pappur Tirthani, and their workman, which was received by the Central Government on 11.03.2020.

[No. L-29011/53/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Dr. S. K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO 60 OF 2006

PARTIES:

Shri Pappu Tirthani,
At: Sindhipara.,
PO & Distt: Pakur
(Jharkhand).

Vs.

The General Secretary,
Rashtriya Quarries Khadan Shramik Sangh,
Vill: Telegraph Road,
Sahibganj (Jharkhand)

Order No. L-29011/53/2006-IR(M) dt.26.09.2006**APPEARANCES :**

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand Industry : Mines**Dated, Dhanbad, the 30th December, 2019****AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them 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-29011/53/2006-IR(M) dt.26.09.2006.**

SCHEDULE

“Whether the action of the Management of Shri Pappur Tirthani, Owner of Mines, at Sindhipara, PO & Distt: Pakur in terminating the services of Shri Kasim Seikh, workman, without complying Sec.25 F of the ID Act is legal and or justified? If not, to what relief the workman is entitled?”

On receipt of the Order No. **L-29011/53/2006-IR (M) dt.26.09.2006** of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 60 of 2006 was registered on 26.09.2006 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

2. The Instant Industrial Dispute case came up for hearing on 27.11.2019 for taking step in the matter of filing of Written Statement of Claim by the workman concerned but none from either of the parties under Reference was present on call nor did file the written Statement of Claim, an onus on the part of the workman concerned since 26.09.2006. The Notices 23.10.2007 and 26.11.2007 and 26.11.2010 were issued under Regd. post to both the litigant parties at the addresses referred on the reference itself but none returned undelivered. So it is presumed to have been served the addresses. Apart from Notices two Show Cause dt.10.03.2008 and 26.05.2008 were also issued to the parties asking for why not the Reference shall be heard ex-parte incase of default. Despite so, the status of the case revolved around the filing of the written Statement of claim to prove that the workman had legitimate issue against the Employer for redressal of the issue through adjudication.

3. The Case is stale one, and dates back to the year 2006. Summons dt. 23.10.2007, 26.11.2007, 26.11.2010, 17.06.2019 and on 05.11.2019 apart from two Show Cause Notices dt. 10.03.2008 and 26.05.2008 were sent at the address of the Sponsoring Union directing them to appear in person or through Representative informing therein why not the Reference, in question, should not be heard ex-parte in event of default of the Sponsoring Union. Even then successive notices one after another sent upon the address of the Sponsoring Union the matter remained unrepresented. Finally on 27.11.2019 proceeding in the Instant Reference Case was concluded and reserved for order due to non-appearance of either of the parties. Note-worthy the W.S, from the party who has raised the dispute, should have been filed within 15 days of the receipt of the order as stated in the Order of Reference from Government of India which reads as follows:

“The Parties raising the dispute shall file a statement of claim complete with relent documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such statement to each one of the opposite parties involved in this dispute under rule 10(b) of the Industrial Disputes (Central), rules,1957. ”

4. Noteworthy, adjournments granted over the case on 23.11.2007, 11.1.2008, 05.03.2008, 23.05.2008, 04.07.2019 and finally on 27.11.2019 apart from being placed for stepping on 26.09.2006, 08.10.2007, 25.11.2010 and 16.06.2019. The Reference can not be kept pending for an indefinite period and left to the mercy of the person at where the Reference is made. In fact the workman who has not discharged his own obligation by filing statement of claim, it appears impossible to decide on merit.

5. The case is about alleged act of termination of the services of Sh. Kasim Seikh, workman without complying Section 25 F of the ID Act by the Management of Shri Pappu Tirthani, Owner of Mines, At Sindhipara, Pakur, an act to which the workman challenged by raising legal Industrial dispute for adjudication.

6. In the light of the above facts recorded, it has been obviously clear that the workman (Petitioner) had not complied the basic action for raising the dispute with claim before the Tribunal in its letter & spirit. On perusal of materials available on record it is established fact that despite issuing of seven notices including Show Cause upon the Sponsoring Union nevertheless the workman unfortunately proved failure for appearance to pursue the case. Such was the situation and considering the age of the case there is no scope before this Tribunal to adjourn instant case further for filing the Written Statement of Claim. Hence the Tribunal has narrow scope to proceed further owing to utter reluctance of the workman to file Written Statement of claim till the last opportunity provided. Accordingly, the Instant reference case is hereby disposed of as if the workman no longer has any demand for relief from the Management and Award is passed accordingly with no relief.

Dr. S. K. THAKUR, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नोआमुंडी आयरन ओर माइन्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 199/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.03.2020 को प्राप्त हुआ था।

[सं. एल-26012/5/2000-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 199/2000) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Noamundi Iron Ore Mines, and their workman, which was received by the Central Government on 11.03.2020.

[No. L-26012/5/2000-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No. 199/2000

Employer in relation to the management of Noamundi Iron Ore Mines of M/s. TISCO

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri D. K. Verma. Advocate.

For the workman : None.

State : Jharkhand.

Industry:- Steel
Dated 24.2.2020

AWARD

By Order No. L-26012/5/2000-IR(M) dated 12/07/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Noamundi Iron Mines of M/s. TISCO Ltd in denial of employment to the dependant son of Shri Gulia Barjo, Ex-employee of Noamundi Iron Mine is justified? If not, to what relief the dependant of Shri Gulia Barjo is entitled?”

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the union/workman left appearing before the Tribunal. Thereafter again regd. Notice was issued to the workman/union but even then no one appeared on behalf of the workman/union. Now the Case is pending since 02/08/2000 and workman/union is not appearing before Tribunal. So, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स राउरकेला स्टील प्लांट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 48/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.03.2020 को प्राप्त हुआ था।

[सं. एल-29012/7/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Rourkela Steel Plant, and their workman, which was received by the Central Government on 06.03.2020.

[No. L-29012/7/2014-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR**

INDUSTRIAL DISPUTE CASE NO. 48 OF 2014

Dated Bhubaneswar, the 31st January, 2020

Present:

Shri B.C. Rath
Presiding Officer,
C.G.I.T-cum-Labour Court,
Bhubaneswar

Between:

The Chief Executive Officer,
Rourkela Steel Plant, At/PO. Rourkela,
Dist. Sundargarh. (Odisha).

...First party management

AND

The General Secretary
Rourkela Shramik Sangh,
D/81, At/PO. Rourkela,
Dist. Sundargarh. (ODisha).

...Second party Union

Appearance:

Shri Subrat Mishra, advocate : For first party management

Shri B.Padhiary, Advocate : For second-party Union

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-29012/7/2014 – (IR(M)) in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (herein after referred to as ‘the Act’) and the terms of reference reads as follows:

‘Whether the demand of the Rourkela Shramik Sangh to provide compassionate employment to Sri Bijay Kumar Mohapatra on the death of his father Late Budhnath Mahapatra who died due to stress taken during employment is justified & proper ? If yes, to what relief he is entitled to get from the Rourkela Steel Plant ?’

2. The case of the second party union, as emerging from its statement of claim is that Late Budhnath Mohapatra was a workman of Fertiliser Plant of the first party management Rourkela Steel Plant having his employee Pl. No. 31537. On 23.11.1996 when he was performing his general shift duty, he fell ill due to stress and strain arising out of his job. He was given primary treatment in the Fertiliser Plant Hospital where-after he was shifted and admitted in to Ispat General Hospital as an indoor patient. He died on 4.12.1996 in the said Hospital while taking treatment for the decease arising out of and in course of his employment. According to the second party, as per the memorandum of agreement dated 18.5.1995 between the management of SAIL and the workmen representative, the dependant of an employee of the management who dies in course of and arising out of his employment is entitled to have a compassionate employment. Since Late workman Budhnath Mohapatra met his death in course of and arising out of his employment, one of his family members is entitled to get compassionate employment. Smt. Bidulata Mohapatra, wife of Late Budhnath Mohapatra made a written appeal on 15.1.1997 requesting for a compassionate employment to her son, Bijaya Kumar Mohapatra. But, the management of RSP did not consider her application claiming that the death of Late Mohapatra was a natural one and it was not occasioned in course of employment or arising out of employment. It is the claim of the union that the applicant Smt. Bidulata Moahapatra preferred a claim under the Workmen’s Compensation Act vide W.C. Case No.69/99 before the Assistant Labour Commissioner &Commissioner for Workmen’s Compensation,Rourkela. The case was adjudicated and compensation was awarded in favour of the applicant Smt. Mohapatra on a finding that the death of Late Budhnath Mohapatra arose due to stress and strain arising out of and in course of his employment. The management preferred an appeal before the Hon’ble High Court on such finding and award of compensation. The Hon’ble High Court of Orissa dismissed the writ appeal confirming the finding of the Assistant Labour Commissioner&Commissioner for workmen’s Compensation, Rourkela. It is the pleading of the second party that despite such finding of the Commissioner of workmen’s Compensation and confirmation of the finding by the Hon’ble High Court, the management did not provide compassionate employment to one of the direct dependant of Late Mohapatra. As a result, a dispute was raised before the Regional Labour Commissioner, Rourkela. Consequent upon the reference is made as stated earlier when efforts of conciliation between the parties failed.

3. The first party management has contested the claim taking a stand that the reference is not maintainable in the eye of law on account of the dispute being prosecuted individually by a member of Late Budhnath Mohapatra, who is not a workman as defined in the Act. That apart, it is the stand of the management that the death of Late Budhnath Mohapatra did not arise either in course of and arising out of his employment. Late Budhnath Mohapata expired on 4.12.1996 due to viral encephalitis, septicemia, DIC and multi-organ failures which is revealed from the death certificate dated 12.12.1996 issued by Senior Medical Officer of Ispat General Hospital, Rourkela. Besides, the family members of Late Budhnath Mohapatra availed the benefit of ‘Employees Family Benefit Scheme’ (in short EFBS), which was introduced by an agreement of NJCS dated 5.7.1989 between the workers representative and the management of SAIL. As per the said scheme financial assistance as a social security measure is provided to the ex-employees or dependant of the ex-employee in case of death/discharge of employment due to permanent total disablement on medical unfitness till normal death or superannuation. As per the said scheme the dependant of the deceased employee continued to receive the last pay drawn by the employee. Wife of Late Budhnath Mohapatra having availed such benefit under the Scheme of 1989, the son of Late Budhnath Mohapatra is not entitled to compassionate employment. Further, the management has challenged the merit of the claim on account of the dispute being raised belatedly after 20 years of the death of Late Mohapatra.

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

- i) Whether the reference is maintainable ?
- ii) Whether Sri Bijay Kumar Mohapatra is a workman or not ?
- iii) Whether the demand of the Rourkela Shramik Sangh to provide compassionate employment to Sri Bijay Kumar Mohapatra on the death of his father Late Budhnath Mohapatra who died due to stress taken during employment is justified & proper ?
- iv) If not, what should be the details ?

5. Sri Bijaya Kumar Mohapatra who is the son of Late Budhnath Mohapatra has been examined as W.W.1 on behalf of the second party and filed documents like copy of the letter dated 13.1.1997 by W.W.1 to the General Manager (P & A) SAIL, copy of the order of the Workmen's Compensation in W.C. Case No.69/99, copy of the Order of the Hon'ble High Court in FAO – 54/2002 arising out of W.C. No.69/99, Copy of the order of withdrawal in W.P. No.6674/1998 dated 27.4.2012, copy of the letter dated 7.5.1997 by SAIL to Smt. Bidulata Mohapatra, copy of Memorandum of Agreement dated 18.5.1995(NJC for the Steel Industry) and the copy of Memorandum of settlement dated 25.7.2001 marked as Exts. 1 to 7 have been placed in support of the claim advanced in the statement of claim. On the other hand, the management has examined its Dy. General Manager (PL)IR as M.W.1 and the Manager (PL)(W&C) as M.W.2 and filed documents such as copy of relevant clause of 8.10.4 and 8.10.5 of tripartite settlement dated 18.7.1989, copy of the circular dated 7.8.1991 regarding introduction of Employees Family Benefit Scheme, copy of the death certificate dated 12.12.1996 issued by the I.G.Hospital, copy of the application of Smt.Bidulata Mohapatra dated 5.4.1997 for availing benefit under EFBS, copy of the membership order of the management dated 2.7.1997, copy of O.J.C. No. 6674/1998 preferred by Smt. Bidulata Mohapatra and copy of tripartite Memorandum of Settlement dated 18.12.1998, application dated 5.4.1997 of Smt.Bidulata Mohapatra, copy of the application of Smt.Bidulata Mohapatra dated 1.7.97, membership order dated 2.7.1997 in favour of Bidulata Mohapatra for E.F.B. Scheme, nomination by Bidulata Mohapatra in favour of Bijaya Kumar Mohapatra, intimation letter dated 16.5.1997 for deposit of P.F. and gratuity amount, letter dated 6.8.1997 regarding monthly payment under the scheme, deposit receipt dated 24.11.1999 and the intimation regarding nomination, payment voucher dated 1.2.2000 regarding refund of said amount and acknowledgement of receipt of the amount by Smt.Bidulata Mohapatra marked as Exts.A to R and to refute the allegation raised in the statement of claim.

FINDING

6. Coming to the issue of maintainability of the reference as raised by the management, it is the stand of the management that neither Smt.Bidulata Mohapatra nor Bijay Kumar Mohapatra who are the wife and son of Late Budhnath Mohapatra comes under the term 'workman' as defined in the Act. Without obtaining any authorization from the second party union they have also no locus standi to prosecute the dispute. The dispute was originally raised by the union namely, General Secretary, Rourkela Shramik Sangh. Hence the reference should have been dismissed out rightly on the ground of non-existence of 'employer employee' relationship between the parties. It is to be mentioned here that the claim petition in this case has been filed by the second party union after a dispute being raised by the said Union before the R.L.C. (C), Rourkela for providing a compassionate appointment to a dependant of Late Budhnath Mohapatra, who was undisputedly a workman of the management. It is not in dispute that Sri Bijay Kumar Mohapatra, son of Late Budhnath Mohapatra is presently prosecuting the matter and both the parties are allowed to be represented through advocate keeping in view the provisions of Section 36(4) of the Act. It is also not in dispute that the second party union has not either authorized Sri Bijay Kumar Mohapatra or learned counsel to prosecute the matter after filing its statement of claim. The reference as well as the dispute there-under has to be adjudicated when the same has been raised by a recognized union. At the same time, provision of subsection (8) of Section 10 of the Act cannot be overlooked which provides "no proceeding pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceeding and submit its award to the appropriate Government". Mere reading of the provision of Section 2(s) of the Act it can be safely said a workman previously engaged in the industry can be covered by the term 'workman' as defined in the Act. Late Budhnath Mohapatra can be said a workman and keeping in view the provision of sub-section (8) of Section 10 of the Act the dispute cannot be allowed to be lapsed merely by reason of the workman being dead prior to the reference more particularly when it is raised by an union recognized by the management. That apart, the issue involved in the dispute though stated to be an individual one, the same needs to be adjudicated as

it relates to cause of every workman employed in the management since compassionate appointment in the event of death of a workman is also a service condition on account of the same being incorporated by NJCS dated 18.5.1995. Further after filing of the statement of claim by the second party union the legal heir of the deceased workman came to the picture and they have participated in the adjudication. Hence they cannot be displaced from the arena of such legal adjudication on a mere contention of non-workman. Therefore, the objection raised by the first party management on the point of maintainability of the reference has no merit.

7. The next point of objection raised by the management is that the claim of rehabilitation have been raised belatedly about 15 years after death of Late Budhnath Mohapatra, the reference is bad in law. According to the management, no application or representation was ever made before the management for rehabilitation till the dispute was raised by the union in 2014. Since the death was a natural one and it did not arise in course of and out of employment and the wife of Late Mohapatra has availed the financial benefit scheme provided in the agreement of NJCS dated 5.7.1989. The dispute was raised after an award passed under Workmen's Compensation Act and it was confirmed by the Hon'ble High Court. Relying upon the decision of the Hon'ble Supreme Court in the case of Pravakar Vrs. Joint Director Sericulture Department and others in SLP (Civil) No. 27080 of 2015, argument was advanced that the delay is not justified. But, it cannot be over sighted that law of limitation is not applicable to the Act. Section 10 of sub-section (1) of the Act provides that appropriate Government have authority to refer a dispute for its adjudication at any time, provided the Government is satisfied that a dispute exists between the parties. Law is well settled that an industrial dispute having been referred by the appropriate Government, the Tribunal has limited scope to question the delay or reject the statement of claim on such ground of delay. Undoubtedly delay in raising industrial dispute is an important circumstances which must be kept in view at the time of exercising discretion by the Labour Court/Tribunal irrespective of fact whether or not such objection is raised by either side. In the instant case the family members of the deceased workman is found to have engaged in a legal battle to have a declaration and for Workmen's Compensation that Late Budhnath Mohapatra met his death in course of and arising out of his employment due to stress and strain suffered in the employment. Hence, delay in raising the dispute has some valid ground. It is also well settled that a relief under the Act cannot be denied to a workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a mater of fact by showing the real prejudice and not as a merely hypothetically defence. Having regard to the settled principles of law and the facts and circumstances of the case, I am not inclined to reject the statement of claim on the ground of dispute being raised belatedly.

8. The next issue comes for consideration is whether Sri Bijay Kumar Mohapatra, son of Late Budhnath Mohapatra is entitled to compassionate rehabilitation/employment. The management has alleged that the dependant of Late Budhnath Mohapatra is not entitled to compassionate appointment on account of death of Budhanath not arising out of and in course of his engagement and it was a natural death due to suffering from viral, encephalitis, septicemia, DIC and multi organ failure. Death certificate of Late Budhanath vide Ext.C is the proof in that regard. Admittedly the death of Budhnath as it appears from Ext.C was due to multi organ failure and other deceases. Question arises if such decease and death can be assigned to stress and strain suffered by Late Budhnath in course of his employment. The management has not disputed the Award of the Commissioner of Workmen's Compensation given under Ext. 2 and the appeal preferred by it against such order before the Hon'ble High Court. It is also not in dispute that the Hon'ble High Court vide its Order dated 6.5.2010 arising out of FAO No.54/2002 did not interfere in the finding of the Commissioner of Workmen's Compesation in regard to cause of death of Late Budhnath Mohapatra as found in the award except reducing the amount of compensation awarded by the Commissioner. That being the position, it is not appropriate on the part of this Tribunal to defer with the finding of the Commissioner of Workmen's Compensation and to form its own opinion on the basis of Ext. C issued by Ispat General Hospital that the death of Budhnath was not in course of and arising out of his employment. Thus, the first contention raised by the management that the dependant of Late Budhnath is not entitled to compassionate appointment on account of death of Late Budhnath not being in course of and arising out of employment is not accepted.

9. The next contention whether availing of benefit under Employees Family Benefit Scheme (EFBS) as introduced in the agreement of NJCS dated 5.7.1989 deprived the dependants of Late Budhnath from the right of a compassionate appointment as provided in the NJCS dated 18.5.1995. From the pleadings and evidence of the parties it is not seriously disputed that wife of Late Budhnath is availaing the benefit of EFBS as provided in the NJCS agreement dated 5.7.1989 as well as in subsequent NJCS agreement. Clause No.3.4.5.1(f) of NJCS agreement of 1995 (Ext. 6) provides that in case of death or permanent total disablement due to accident arising out of and in course of and in course of employment, employment to one of his/her direct dependants will be provided. Clause 3.4.6 of the said agreement also provides a monetary benefit to the family members of employees in case of death or whose services are terminated on account of permanent total disablement/permanent medical unfitness as formulated and introduced with effect from 1.1.1989. Under the

said Scheme all employees who have put in a minimum one year of service in the Company are covered. Thus, mere reading of above clauses it is clear that the clauses are independent to each other. The first clause under 3.4.5.1(f) confers a right on the dependants of a deceased employee or permanently disabled employee to seek for a compassionate employment from the employer provided death or permanent disability of the employee/workman was due to accident arising out of and in course of employment. The other clause 3.4.6 confers a right to the family members to avail financial benefit scheme. There is nothing in the said agreement (Ext. 6) to suggest or to hold that dependants or family members of the deceased employee have to either receive the financial benefit or in alternative a compassionate employment. There is also no specific term and condition in the said agreement that if family members availed financial benefit scheme, one of the direct dependants of the deceased employee is not entitled to a compassionate employment. However, in the NJCS agreement of 2001 (Ext. 7) clause 3.4.5.1(f) provides for an alternative choice to the dependants of a deceased employee either to go for the benefits under EFBS or for a compassionate employment. In the case at hand, it is not in dispute that Budhnath died on 4.12.1996 and by that time the NJCS agreement of 1995 (Ext.6) was in force. Therefore, the contention of the management that term and condition of NJCS agreement of 2001 does not give a scope to the family members/dependants of Late Budhnath to claim for a compassionate employment has no force more particularly when the dependant W.W.1 claims that his mother submitted an application on 7.2.1997 requesting for a compassionate appointment for him by submitting his detailed bio-data along with the application. The cross-examination of W.W.1 is not demolished in this regard. In that view of the matter, the NJCS agreement of 2001 does not affect the right of dependants of Late Budhnath from availing of financial benefits under the Scheme of EFBS as well as to claim for compassionate employment. It is also argued on the basis of Ext.G i.e. the memorandum of settlement dated 18.12.1998 that the dependants of deceased employee covered under EFBS is not eligible for compassionate employment. The above argument has no force as the agreement was subsequent to the death of Budhnath. Keeping in view the finding of Commissioner of Workmen's Compensation under Ext.2, it is to be accepted that the death of Budhnath was due to an accident arising out of and in course of his employment and as per the provision under Clause 3.4.5.1(f) one of his dependants is entitled to compassionate employment even though his wife availed benefits under EFBS. Since the NJCS agreement of 1995 prevailing at the time of death of the employee did not prohibit for a compassionate employment to a dependant of the deceased employee irrespective of fact of financial benefits enjoyed by the family members under EFBS, one of the direct dependants of Late Budhnath can ask for compassionate employment.

10. The next issue comes for consideration is the relief to which the dependants of deceased employee is entitled. As per the pleadings and evidence of Bijaya Kumar Mohapatra compassionate employment was preferred on 7.2.1997. Though a claim has been made during argument that the benefit of compassionate employment should be given retrospectively with immediate effect, there is no provision or condition in the NJCS agreement that such appointment is to be given as soon as possible when such representation is made or such appointment is to be given effect retrospectively or such appointment is to be effective from the date of accidental death of the employee. On the other hand, such compassionate employment is usually extended on the application of the dependant of the affected employee and such claim can be countenanced only as against a specified number of vacancies arising in a year with subject to the satisfaction of the authority that the family members of the concerned employee are in distress. Further such applicants are usually in queue and appointment is given to such applicant when his/her turn comes in the queue. The Hon'ble Apex Court have set out that the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person on compassionate ground. Since, this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the Courts/Tribunals by issuing directions for relaxation, merely on account of sympathetic considerations or hardships of the person concerned. The Courts cannot direct appointments on compassionate grounds de hors the provisions / the scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the Court cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial right of parties could be held to have been proved otherwise. But, as per the settled principles such appointment is usually taken into consideration as per the term in the queue based on the date of application visa-vis availability of vacancies and the ceiling fixed for such appointment in every year as well as subject to satisfaction of the authority that the family of the workman/employee is in distress. Having regard to the above settled principles and the fact that W.W.1 filed his application on 7.2.1997, the management is directed to provide a compassionate employment to W.W.1 as per his suitability to a post and subject to satisfaction of other condition for the appointment presuming the dependant Bijaya Kumar Mohapatra to be in queue with effect from 7.2.1997. In case of his turn in the queue is already reached and crossed, he shall be adjusted in the

next vacancy arising within the ceiling fixed for such compassionate appointment. In case of any delay on the part of the management in complying the above direction within two months of the Award being notified in the Official Gazette, the management is liable to pay all service benefits to the dependant Sri Bijaya Kumar Mohapatra from the date of Notification of the Award.

The reference is answered and the Award is passed accordingly.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अल्ट्राटेक सीमेंट लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 296/2013, 297/2013, 298/2013, 299/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.03.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 296/2013, 297/2013, 298/2013, 299/2013) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Ultratech Cement Limited and other, and their workman, which was received by the Central Government on 17.03.2020.

[No. Z-16025/4/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

1. ID No. 296/2013
Joginder Singh S/o Ram Singh, R/o V.P.O.-Karad, Tehsil Israna, Distt. Panipat.
 2. ID No.297/2013
Nasrudeen S/o Niyazi, R/o H.No.1214, VPO-Israna, Tehsil Israna, Distt. Panipat.
 3. ID No.298/2013
Rohtash S/o Ishwar R/o V.P.O. Aher, Tehsil Israna, Distt. Panipat.
 4. ID No.299/2013
Naresh Kumar S/o Nanda, R/o V.P.O. Bumbrehri, Tehsil Assandh, Ditt. Karnal.
- Registered on:-08.11.2013

...Claimants/Workmen

Versus

1. M/s. Ultratech Cement Limited (Unit Panipal Cement Works) through its M.D. & Asstt. Vice President Sh. Anil Shukla, Situated at Pardhana Road, Village-Karad, PO Israna, Tehsil-Israna, Distt. Panipat.
 2. M/s. S.R. Contractor through Prop. Satpal & others, Kheta Singh Basti, Back Side Thermal, Kachi Colony, Bhatinda-151002 (Punjab).
- ...Respondents/Managements

AWARD**Passed on:-17.02.2020**

1. All above mentioned claim petitions are related to the same set of facts, written statements, oral and documentary evidences and the cause of action of either parties are common hence, all the petitions are decided by a common judgment, making leading case titled as ID No.296/2013 Joginder Singh Vs. Ultratech Cement & Oths.

2. The workmen have preferred the above mentioned claim petitions under Section 2-A of the Industrial Disputes Act, 1947, in pursuance of the certificates issued by the Assistant Labour Commissioner, Central, Karnal, Sh. M.S. Meena, dated 27.09.2013, alleging therein that they were employed as Tipper Operator(workman Joginder Singh S/o Ram Singh on 01.03.2010, Nasrudeen S/o Niyazi on 01.04.2009, Rohtash S/o Ishwar on 11.07.2011 and Naresh Kumar S/o Nanda on 02.12.2008) by respondent no.1 M/s Ultratech Cement Ltd. with the assurance that they would be given appointment letter subsequently on the monthly salary of Rs.6750/- for 8 hours duty in a day but management/respondent no.1 had paid only Rs.5625/- per month without issuing any appointment letter. Later on their services were shown under the contractor/respondent no.2 i.e. M/s S.R. Contractor, who is the labour supply contractor agency and the contract between respondent no.1 and respondent no.2 is nothing but is camouflage one which is prohibited under the Contract Labour Act(R&A) 1970. The work of the claimants/workmen were perennial in nature. The claimants had worked there upto 04.03.2013 under the supervision of M/s S.R. Contractor to the satisfaction of the employer. The respondents/managements had illegally terminated the services of the workmen from 04.03.2013 due to annoyance for demand of appointment letter by the workmen without giving any notice or retrenchment compensation in lieu of notice against the provision of Section 25-F of the Industrial Disputes Act, 1947. Respondents/managements appointed some new workmen after the termination of the workmen. Respondent no.1 had given assurance that after some time they would be taken back in service on their pay roll. The workmen had been thoroughly exploited by the various contractors and they had been paid meager salary for the last 3-4 years. It is further alleged that the managements/respondents has not followed the principle of last come first go at the time of the terminating the services of the claimants/workmen, violating the provisions of Section 25-G and 25-H of the Industrial Disputes Act, 1947. In this way, the respondents/managements adopted the unfair labour practice, under Section 2(ra) of the Industrial Disputes Act, 1947. As per the averments made in the claim petitions, workmen/claimants had rendered services more than 240 days in preceding year before their termination. Hence, it is prayed that this Hon'ble Court may deem fit and proper to awarded reinstatement to the workmen along with other consequential reliefs.

3. Respondent No.1 i.e. Ultratech Cement Ltd. has submitted its written statement, alleging therein that the claim petitions filed by the workmen are not maintainable and liable to be dismissed. It is averred that there did not exists relationship of employer and employee between the answering respondent and workmen as workmen had rendered their services under respondent no.2 i.e. S.R. Contractors and not with the answering respondent. Answering respondent has not issued any appointment letter or notice or compensation in lieu of notice at the time of the alleged termination. In fact on 01.03.2013 the answering respondent had warned the respondent no.2 in writing through a letter regarding immoral activities of the workers employed by respondent no.2. Thereafter, the workmen along with other applicants filed a joint application before the Labour & Arbitration Officer, Panipat, where the issue is resolved in their satisfaction and respondent no.2 i.e. S.R. Contractors had paid all the outstanding dues to the applicants/workmen against a full and final payment receipt dated 16.04.2013 as such, workmen are not entitled for any relief in the claim petitions. It is further averred that workmen/claimants were employed by the contractors and they were getting salary from the contractors as such, question of termination by the answering respondent does not arise at all. The facts alleged for appointment by the respondent no1 on monthly salary of Rs.6750/- and assurance regarding the issuance of notice is totally false and the workmen are not entitled for any relief from the answering respondent.

4. Respondent No.2 i.e. S.R. Contractors has filed its written statement, alleging therein that claimants/workmen have no legal right to file and maintain the present claim petition against the answering respondent as they were hired on daily wage basis as per the terms of the contract entered into by respondent no.1. It is further stated that after the completion of the contract period, the services of the applicant also came to an end automatically. The claimants/workmen have not come before the Tribunal with clean hands and has concealed the material facts from the Hon'ble Tribunal. In fact, the claimants/workmen were initially appointed on 01.08.2012 as Tipper Operator on the fixed monthly amount of Rs.5850/- and after the deduction of EPF they were given Rs.5138/- per month including the welfare amount of Rs.10/- per month. The claimants/workmen were offered work due to the temporary pressure of work/exigencies and every time an appointment letter had been issued to the claimants/workmen whenever they were engaged for a specific contract and last time they were appointed on 01.01.2013 @ Rs.225/- per day. A copy of the appointment letter

is annexed as Annexure R-2/1 with the written statement. The answering respondent had paid all the outstanding dues to the workmen against a full and final payment receipt dated 16.04.2013. Due to the act and conduct of the applicant and his co-workers, the respondent no.1 has already terminated the contract therefore, claimants/workmen cannot be reinstated at the same place where they were working. The answering respondent offered them job at some other site but they refused to join. According to the written statement, it were workmen who abandoned the job from 04.03.2013 without any notice, permission or information to the answering respondent. The facts alleged in para 3 to 10 of the claim statement are wrong and denied. The applicants/claimants had never completed 240 days in a calendar year hence, the provision of ID Act does not attract in the present case. It is therefore, specifically prayed that in view of the false and frivolous nature of the applications, the same may kindly be dismissed with heavy costs.

5. In support of their cases, workman Joginder Singh has appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.A1 and has been cross-examined by the learned counsel of respondent no.1 and has stated that he was kept in service in March 2010 while workman Rohtash has alleged that he was kept in service in September 2011 while workman Nasrudeen has alleged that he was kept in service upto 2009 and workman Naresh has alleged that he was kept in service in December 2008. All the workmen have stated that they were appointed by respondent no.1 i.e. Ultratech Cement Ltd. but appointment letter was not issued to them in spite of the assurance given by the respondent. During the course of cross-examination, these workmen have stated that they were not appointed by respondent no.2 i.e. S.R. Contractors. As per their statements, they were getting salary of Rs.6750/- per month but they have not any record with respect to the salary and appointment. Workmen have specifically denied their signatures on Ex.R-1, letter of appointment issued by respondent no.2 and payment of full and final payment through receipt Mark R-2.

6. Respondent No.1 Ultratech Cemnt Ltd. has examined Sh. Radha Krishan Bishnoi, Officer HR, who has proved his affidavit as Ex.MW1/A and documents Ex.M1/1 to M1/6 as a part of his statement. During the course of cross-examination by the workmen counsel, this witness has stated that the workmen were working with the management through contractor. He has further stated that EPF was deducted by the contractor of the respective workmen and denied the suggestion that workmen were retrenched by the management. This witness has further stated that nothing is due with respect to the salary and other allowances of the workmen and it is the contractor who used to mark the attendance of the workman and pay the salary accordingly.

7. Respondent no.2 S.R. Contractor has not lead any evidence despite several opportunities given by the Tribunal and his opportunity was closed by this Tribunal vide order dated 03.12.2019.

8. I have heard Sh. Ravi Malik, Ld. Counsel for the workman and Sh. Arun Batra, Ld. Counsel for respondent No.1-Ultratech Cement Ltd. in the absence of respondent no.2-S.R. Contractors counsel and have gone through the records carefully.

9. There is no dispute about the proposition of law that onus to prove that claimant was in the employment of management is always on the workmen/claimants and it is for the workmen to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that they have worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Sureme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikhubhai Meghajibhai Gavda(2012) 1 SCC 47.

10. There is hardly any dispute with the preposition of law as propounded in the aforesaid cases. However, the factual scenario in the present case is quite different inasmuch as the respondent no.2 S.R. Contractors in its written statement has clearly admitted the factum of the employment of the workmen inasmuch as it has been stated that the workmen were engaged for the work of respondent no.1 Ultratech Cement Ltd. undertaken through contract as such, it clearly establishes the relationship of employer and employee between respondent no.2 and claimants as workmen. In this regard, reference can be made to the decision of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing

whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.”

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of “workman” as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a “workman” within the Industrial Disputes Act, 1947.

11. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act. It is a specific case of the workmen/claimants that they were engaged as Tipper Operator by respondent No.1 Ultratech Cement Ltd. but all the workmen has accepted in their statement that they have not any documents with respect to the appointment or salary paid by respondent No.1. Thus, there is nothing on record to prove the factum of the claim petitions that workmen were engaged by respondent no.1-Ultratech Cement Ltd. The evidence on record and admission of respondent No.2-S.R. Contractors with respect to the employment of workmen are duly proved by virtue of the admission of respondent no.2 as alleged in the written statement as well as from the evidence of respondent No.1-Ultratech Cement Ltd. witness Radha Krishan Bishnoi.

12. The question which is relevant for the consideration with respect to the present claim petitions are that who terminated/retrenched the services of workmen. Respondent no.1-Ultratech Cement Ltd. has specifically stated in its written statement that workmen were neither engaged by the corporation nor they were retrenched/terminated by the corporation. The factum of the employment by respondent no.2 to the workman are not disputed at least on the part of S.R. Contractors. It is pertinent to mention that workmen in their claim petitions have stated in so many words that they have been thoroughly exploited by the various contractors and they have been paid meager salary for the last 3-4 years. It is worth mentioning that they have also admitted in their claim statement that their works were supervised by the contractors. Thus, it becomes admitted fact that workmen were employed through contractor and it is the contractor who supervised their works by virtue of the facts mentioned in the claim petition itself.

13. The question which remains to be seen whether the termination/retrenchment as is alleged in the claim petitions is in accordance with the law or not? As per the claim statement and evidence of the respective workmen on Oath, their services were terminated by the management/respondent without any notice or compensation in lieu of notice. Equally settled is the position of Law that when relationship of employer and employee stands proved between the parties then onus will shift upon the management to show that claimants had not worked for 240 days or more in a calendar year or the services of the workmen were terminated in accordance with law. Going through this settled position of law and perusal of the written statement filed by respondent no.2 S.R. Contractors, it transpires that answering-respondent was not decisive to put its defence with respect to termination. The facts alleged in the written statement reveals that contract between the respondent no.1 and respondent no.2 was terminated due to the act and conduct of the workmen and other co-workers and workmen refuse to join the job offered by the contractors at some other site but no one has appeared on behalf of the S.R. Contractors to prove this factum that respondent no.1 had terminated the contract of respondent no.2 due to the act and conduct of the applicant/workmen.

14. Respondent no.2 S.R. Contractors has taken second defence that workmen have abandoned the job at their own without any notice, permission or information to the respondent. Contrary to this, it is a specific case of the workmen that their services were terminated by the managements/respondents. It is relevant and pertinent to mention that either party has not adduce any cogent evidence in this connection, and if it is so, no material has been produced by the workmen to substantiate that they were not allowed to discharged the duties of the post by issuing communication to the respondent-management. At the same time, the respondent-management has not issued any notice in writing asking the workmen to report back to duty, if they remained unauthorised absent or absented w.e.f. 04.03.2013 as contended by the learned counsel for respondent no.1. There is no correspondence between the workmen and respondent/management in respect of service condition of the workmen. Hon'ble Punjab & Haryana High Court dealing with the Writ Petition No.8898/1994 (O&M) dated 30.11.2016, 2017 LLR 95, Kali Ram vs. Presiding Officer and Another. has held that in such a situation, the contention of the respondent-management that workman has abandoned the services is not acceptable because of non-issuance of show cause notice to join the service back to the workmen. Having regard to the conduct of workmen and respondent-management insofar as perusing the issue relating to taking back to duty or abandoned the service is concerned, there are lapses and it is the respondent/management, who has to issue show cause notice to join service. Thus, Hon'ble High Court has laid down that it was the duty of management

at least to issue a show cause notice regarding the joining of service to the workmen but that has not done in this case. To my mind, it is not the workmen who had left their jobs on their own rather than they were forced to leave the work by management.

15. So far as the question with respect to ID No.299/2013 titled as Naresh Kumar Vs. Ultratech Cement Ltd. & Oths. is concerned. Undoubtedly, claimant Naresh Kumar has not submitted any oral evidence through affidavit nor produced himself for cross-examination, resulting the opportunity of the workman Naresh Kumar closed but relevant fact is that in spite of the absence of oral evidence, there are sufficient evidence on record by way of admission of the respondent no.1 i.e. Ultratech Cement Ltd. and respondent no.2 i.e. S.R. Contractors. Claim petition of the workman Naresh Kumar could be decided in the same way like other claim petitions. The reason behind this observation is that the employment of Naresh Kumar along with other workmen, tenure of his service and termination/abandonment as is alleged by the workman Naresh Kumar as well as respondent no.2 are same. Section 58 of the Evidence Act clearly stipulates that admitted facts need not to be proved hence, if the employment by the respondent no.2 S.R. Contractors and length of service, date of termination or abandonment whatsoever it may be, are same then he is equally entitled for the relief as is claimed in the claim petition along with other workmen who have submitted their oral evidence in the form of affidavit.

16. Now the residual question which arises for consideration is whether the workmen/claimants are entitled to any relief of reinstatement and back wages? It is admitted and proved on record that workmen had worked (workman Joginder Singh from 01.03.2010, Nasrudeen from 01.04.2009, Rohtash from 11.07.2011 and Naresh Kumar from 02.12.2008) till 04.03.2013 on regular basis. Moreover, the job of the workmen were of perennial in nature subject to the agreement entered into between the respondent no.1 i.e. Ultratech Cement Ltd. and respondent no.2 i.e. S.R. Contractors. The witness of respondent no.1 Radha Krishan Bishnoi, Officer HR, has clearly admitted and proved that the contract with respondent no.2 had come to an end and he has not engaged aforesaid contractor in any business so far as such, reinstatement of the workmen with respondents are not possible in the absence of any evidence contrary produced by the workmen. But it is equally proved that respondent no.2 S.R. Contractors has terminated the services of the workmen without giving any notice or retrenchment compensation in lieu of notice in utter violation of Section 25-F of the Industrial Disputes Act, 1947.

17. The Hon'ble Apex Court in case of **“Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya”** reported as (2013) 10 SCC 324 has held as under:-

“The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”*

18. Yet in another latest case of **Hari Nandan Prasad vs. Food Corporation of India (2014) 7 Supreme Court cases 190** as under:-

“Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying

the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.”

19. In the recent decision reported as **2018 LLR 225 titled as District Development Officer & another vs. Satish Katilal Amrelia**, Hon’ble Apex Court while aptly applying the law laid down in earlier case of **Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177**, had awarded lumpsum compensation of Rs.2.5 lakhs to the workman and in Bharat Sanchar Nigam Limited (supra), it was observed as under:-

“33. It is clear from the reading of the aforesaid judgements that the ordinary principle of grant of reinstatement with full back wages when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatory required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularisation (see State of Karnataka Vs. Umadevi (3) 17). Thus, when he cannot claim for regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay, in such a situation, giving the relief of reinstatement that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of principle of last come first go, vis. While retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated, in such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement in such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such relief can be denied.”

20. Having regard to the recent judicial trends and duration of service rendered by the claimants/workmen, an amount of Rs.3 lakh to Joginder Singh S/o Ram Singh, Rs.2 lakh to Nasrudeen S/o Niyazi, Rs.75,000/- to Rohtash S/o Ishwar and Rs.2 lakh to Naresh Kumar S/o Nanda appears to be just and reasonable compensation. Hence, respondent no.2 i.e. S.R. Contractors, who has terminated the services of the workman in utter violation of Section 25-F of the Industrial Disputes Act, 1947 is directed to comply the award within two months from the notification of the award by the Central Government. The claim petitions are answered accordingly.

21. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

22. Copy of the award be kept in ID No.297/2013 titled as Nasrudeen Vs. Ultratech Cement & Oths., ID No. 298/2013 titled as Rohtash Vs. Ultratech Cement & Oths. and ID No.299/2013 titled as Naresh Kumar Vs. Ultratech Cement & Oths.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 219/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.03.2020 को प्राप्त हुआ था।

[सं. एल-30012/10/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 219/2011) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Limited, and their workman, which was received by the Central Government on 17.03.2020.

[No. L-30012/10/2011-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 219/2011

Registered on:-12.10.2011

Jai Bhagwan S/o Dalu Ram R/o Village-Badli, Pana-Chowdharan,
The.-Bahadurgarh, Distt.-Jhajjar.

...Workman

Versus

The General Manager, HPCL, LPG Bottling Plant, Assaudha,
Bahadurgarh, Distt. Jhajjar.

...Respondent/Management

AWARD

Passed on:-14.02.2020

Central Government vide Notification No. L-30012/10/2011-IR(M) Dated 14.09.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of General Manager, HPCL, LPG Bottling Plant, Asaudha, Bahadurgarh, Distt. Jhajjar (Haryana) in terminating the services of the workman Shri Jai Bhagwan S/o Shri Dalu Ram, Ex-LPG Operator w.e.f. 15.06.2009 is just, fair and legal? To what relief the workman is entitled and from which date?”

1. Both the parties were put to notice and claimant Jai Bhagwan filed statement of claim, with the averment, that he was appointed by the management on 01.11.1996 as LPG Operator under the supervision and control of the management and had completed more than 12 years of service without any complaint regarding his act and conduct. He remained in good book of his all concerned-officials and worked satisfactory till 15.06.2009 when his services were illegally and with mala fide intention terminated by the management. The workman gave the complaint against Mr. Pawar so many times to senior officers and National Commission for Scheduled Caste but in vain as well as Sh. G.L.K. Pawar, Manager, HP L.P.G. Gas Plant of Assaudha (Bahadurgarh), called the workman many times by caste. The workman requested the management so many times regarding misbehavior of Sh. G.L.K. Pawar but the management threatened the workman that if he again complained, then management will implicate him in a false case. The workman was not given any retrenchment compensation as well as notice. The management has violated the Section 25-F (a) (b) of the ID Act, which is

mandatory and the same is meant for protection of the rights of the workman. It is therefore, prayed that the impugned order dated 15.06.2009 may kindly be declared illegal, null and void and the workman be reinstated in service with full back wages along with continuity of service and other consequential benefits.

2. Management has filed its written statement and denied the contents of Para 1 of the claim statement that the services of the claimant were terminated illegally with mala fide intention by the management on 15.06.2009. The workman was issued a charge-sheet MNZ:AK:LPG dated 25.06.2007 for remaining unauthorized absent for 118 days during the period of June 2006 to April 2007 and the claimant replied to the charge-sheet vide letter dated 09.07.2007. On the conclusion of the enquiry proceedings, the EO vide his report dated 16.03.2009 held CE guilty of charges leveled against him under clause 31(5) and 31(7) of the certified standing orders applicable to the claimant. Remaining paras are denied by the management for the want of knowledge. The claimant had received the cheque of Rs.14,780/- towards 30 days wages in lieu of notice period and also received his full and final settlement. The management has categorically stated that the claimant had accepted the lawful and reasonable order dated 08.06.2009 of the disciplinary authority in its letter and spirit. It is therefore, prayed that in the light of the above reply, the claim petition of workman may kindly be dismissed with exemplary cost in the interest of justice and fair play.

3. In support of his case, the workman Jai Bhagwan appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.W1 and has been cross-examined by the learned counsel of management.

4. Management has examined Sh. Abhimanyu Das, Senior Plant Manager, who has filed his affidavit Ex.MW1 along with documents Ex.MW1/12 and cross-examined by the workman counsel.

5. I have heard Sh. Chander Shekhar, Ld. Counsel for the workman and Sh. Anil Johar, Ld. Counsel for management and have gone through the records carefully.

6. Claimant/workman Jai Bhagwan, has filed this claim petition challenging the termination order dated 15.06.2009 as illegal, null and void along with the reinstatement and full back wages. But at the stage of arguments, parties entered into a compromise and workman/claimant Jai Bhagwan made a statement on Oath that he has amicably settled the matter with the management subject to payment of Rs.7,26,844/-, which has been paid by three cheques dated 06.02.2020 amounting to Rs.4,55,608/-, Rs.1,69,648/- and Rs.1,01,588/- as full and final settlement. Workman has further stated that reference be answered accordingly in the light of the settlement arrived at between the parties and he has no grievance with the management. The statement of workman is also verified by his learned counsel Sh. Chander Shekhar as well as learned counsel of management Sh. Anil Johar and Som Nath Singla, Superintendent, who has been authorized by the management. Thus, workman Jai Bhagwan has finally settled the matter with the management.

7. The facts mentioned in the claim petition as well as written statement and evidence produced by either party whether oral or documentary need not required critical analysis by virtue of the compromise between the parties and workman has already taken full and final settlement of Rs.7,26,844/-.

8. It is now well settled position in law that any settlement arrived at between the parties is legally binding upon both the parties in terms of the provisions of Section 18 of the Industrial Disputes Act, 1947. In view of the amicable settlement, there is no requirement to proceed with the present reference. Statement of the parties shall form the integral part of the Award.

9. In the aforesaid circumstances, it will be desirable to answer the reference not on merit but on the basis of the settlement entered into between the parties. Hence, the reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 मार्च, 2020

का.आ. 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई स्टील प्लांट एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 11/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.03.2020 को प्राप्त हुआ था।

[सं. एल-26011/37/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2016) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and other, and their workman, which was received by the Central Government on 06.03.2020.

[No. L-26011/37/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/11/2016

Present: P. K. Srivastava, H.J.S..(Retd)

The President,
Metal Mines Workers Union (INTUC),
Qtr. No. 6A, Street No. 37/B, Sector-7
Bhilai Nagar, District-Durg (C.G.)

...Workman

Versus

The Chief Executive Officer
Bhilai Steel Plant,
Post Office Bhilai,
District Durg (C.G.)

The Dy. General Manager (Mines)
Nandni Mines of BSP,
P.O-Nandni Mines.
District Durg (CG)

...Management

AWARD

(Passed on this 11th day of February-2020)

1. As per letter dated 20/1/2016 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-26011/37/2015-IR(M). The dispute under reference relates to:

“1. Whether the action of the management of Nandni Mines, Bhilai Steel Plant in changing the designation and nature of work in respect of Shri Umesh Ratan Sinha ,workman without following the provisions of ‘Certified Standing Order’ is legal and justified? If not, what relief the workman is entitled to?

2. The Nandni Mines is a captive mines of Bhilai Steel Plant, Bhilai is a unit of SAIL and Public Sector undertaking and the Central Government is appropriate Government .”

2. After registering the case on the basis of reference, notices were sent to the parties. Both the parties filed their respective pleadings but during the course of proceedings the legal heirs of workman submit that the workman has died and they being his legal heirs do not wish to further proceed with this Reference and have filed an application that he does not want to raise the dispute further and requested for passing a No-Dispute order vide an application dated 11-11-2019.

3. The learned Counsel for Management makes an endorsement of no objection in this application.

4. None of the parties have filed any evidence.

5. On the basis of application of workman, there is sufficient reasons to believe that the dispute has now seized to exist, hence the reference itself has become infructuous.

6. In the light of this new development, the Reference is not answered in Negative or Positive, as consented by both the parties.

7. On the basis of the above discussion, A No-Dispute Award is passed in this Reference as consented by both the parties.

P. K. SRIVASTAVA, Presiding Officer

DATE: 11.2.2020

नई दिल्ली, 17 मार्च, 2020

का.आ. 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई स्टील प्लांट एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 10/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.03.2020 को प्राप्त हुआ था।

[सं. एल-26011/36/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th March, 2020

S.O. 395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2016) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and other, and their workman, which was received by the Central Government on 06.03.2020.

[No. L-26011/36/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/10/2016

Present: P.K. Srivastava, H.J.S..(Retd)

The President,
Metal Mines Workers Union(INTUC),
Qtr.No.6A, Street No.37/B,Sector-7
Bhilai Nagar,District-Durg(C.G.)

...Workman

Versus

The Chief Executive Officer
Bhilai Steel Plant,
Post Office Bhilai,
District Durg (C.G.)

The Dy.General Manager (Mines)
Nandni Mines of BSP,
P.O-Nandni Mines.
District Durg (CG)

...Management

AWARD

(Passed on this 11th day of February-2020)

- As per letter dated 20/1/2016 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-26011/37/2015-IR(M). The dispute under reference relates to:

“1.Whether the action of the management of Nandni Mines, Bhilai Steel Plant in changing the designation and nature of work in respect of Shri Sunil Gardia, workman without following the

provisions of 'Certified Standing Order' is legal and justified? If not, what relief the workman is entitled to?

The Nandni Mines is a captive mines of Bhilai Steel Plant, Bhilai is a unit of SAIL and Public Sector undertaking and the Central Government is appropriate Government."

2. After registering the case on the basis of reference, notices were sent to the parties. Both the parties filed their respective pleadings but during the course of proceedings the workman filed an application that he does not want to raise the dispute further and requested for passing a No-Dispute order vide an application dated 11.11.2019.
3. The learned Counsel for Management makes an endorsement of no objection in this application.
4. None of the parties have filed any evidence.
5. On the basis of application of workman, there is sufficient reasons to believe that the dispute has now seized to exist, hence the reference itself has become infructuous.
6. In the light of this new development, the Reference is not answered in Negative or Positive, as consented by both the parties.
7. On the basis of the above discussion, A No-Dispute Award is passed in this Reference as consented by both the parties.

P. K. SRIVASTAVA, Presiding Officer

DATE: 11.2.2020

नई दिल्ली, 19 मार्च, 2020

का. आ. 396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स बी.बी.एम.बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह-श्रम न्यायालय नम्बर-2 चंडीगढ़ के पंचाट (संदर्भ संख्या 53/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.03.2020 को प्राप्त हुआ था।

[सं. एल-23012/68/2018-आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 19th March, 2020

S.O. 396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of M/s. B.B.M.B and their workmen, received by the Central Government on 18.03.2020.

[No. L-23012/68/2018-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 53/2018

Registered on:-20.11.2018

Ram Ditta S/o Dandu Ram, R/o Village Lahra, PO Majhwar,
Tehsil Ghumarwin, Distt. Bilaspur (HP)-174001.

...Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sunder Nagar-175038.

...Respondents/Managements

AWARD
Passed on:-03.03.2020

Central Government vide Notification No. L-23012/68/2018-IR(CM-II) Dated 14.11.2018, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of management of BBMB in not accepting the demand of Sh. Ram Ditta S/o Sh. Dandu Ram, for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?”

1. On the receipt of the above reference, notice was sent to the workman as well as the managements/respondents. The postal article sent to the workman, referred above, is duly delivered to the workman. Workman is given sufficient opportunity to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor has he led any evidence so as to prove his cause against the managements/respondents, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim Award’. It is also clarified that passing of the no claim award/no dispute award would not bar the workman from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 19 मार्च, 2020

का. आ. 397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स बी.बी.एम.बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह - श्रम न्यायालय नम्बर-2 चंडीगढ़ के पंचाट (संदर्भ संख्या 58/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.03.2020 को प्राप्त हुआ था।

[सं. एल-23012/90/2018-आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 19th March, 2020

S.O. 397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of M/s. B.B.M.B. and their workmen, received by the Central Government on 18.03.2020.

[No. L-23012/90/2018-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sh. A. K. Singh, Presiding Officer**ID No. 58/2018**

Registered on:-04.12.2018

Chater Singh S/o Paddu, R/o Village Jhiriwala, P.O. Reru,
Tehsil Nalagarh, Distt. Solan (Himachal Pradesh)-173212.

...Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sunder Nagar-175038. ...Respondents/Managements

AWARD**Passed on:-03.03.2020**

Central Government vide Notification No. L-23012/90/2018-IR(CM-II) Dated 15.11.2018, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of management of BBMB in not accepting the demand of Sh. Chater Singh S/o Paddu for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?”

1. On the receipt of the above reference, notice was sent to the workman as well as the managements/respondents. The postal article sent to the workman, referred above, is duly delivered to the workman. Workman is given sufficient opportunity to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.
2. Since the workman has neither put his appearance nor has he led any evidence so as to prove his cause against the managements/respondents, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim Award’. It is also clarified that passing of the no claim award/no dispute award would not bar the workman from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer