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प्राधिकार से प्रकाशित
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सं. 07] नई दिल्ली, फरवरी 14—फरवरी 20, 2021 शनिवार/ माघ 25—फाल्गुन 1, 1942
No. 07] NEW DELHI, FEBRUARY 14—FEBRUARY 20, 2021, SATURDAY/MAGHA 25—PHALGUNA 1, 1942

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)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 16 फरवरी, 2021

का. आ.129.—केंद्रीय सरकार, आतंकवादी और विध्वंसकारी क्रियाकलाप (निवारण) अधिनियम, 1987 (1987 का 28) की धारा 13 की उपधारा (1) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री वी. सुरेंद्र मोहन, लोक अभियोजक, केंद्रीय अन्वेषण ब्यूरो, विशेष अपराध शाखा, चेन्नई को नियमित मामले, अर्थात् आर.सी. 16(एस)/1993/सीबीआई/एससीबी/चेन्नई और इससे संबद्ध किसी अन्य या आनुषंगिक विषय जिसका विशेष पुलिस स्थापना (सीबीआई) द्वारा अन्वेषण किया गया है या जिसे आतंकवादी और विध्वंसकारी क्रियाकलाप (निवारण) अधिनियम, 1987 की धारा 9 के उपबंधों के अधीन गठित चेन्नई स्थित पदाभिहीत न्यायालय में संस्थित किया गया

है, के अभियोजन का संचालन करने के लिए उनकी नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या मामले के निपटान की तारीख तक, इनमें से जो भी पहले हो, विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/03/2019-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 16th February, 2021

S. O. 129.—In exercise of the powers conferred by the proviso to sub-section(1) of section 13 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), the Central Government hereby appoints Shri V. Surendra Mohan, Public Prosecutor, Central Bureau of Investigation, Special Crime Branch, Chennai as Special Public Prosecutor for conducting prosecution of regular case namely, RC-16(S)/1993/CBI/SCB/Chennai and any other matter connected therewith or incidental thereto, investigated or instituted by the Delhi Special Police Establishment (CBI), in the Designated Court at Chennai, constituted under section 9 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, for a period of three years from the date of appointment or till the date of disposal of the case, whichever is earlier.

[F. No. 225/03/2019-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 19 फरवरी, 2021

का. आ. 130.—केंद्रीय सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान सरकार, गृह (जीआर-V) विभाग, जयपुर की दिनांक 28.12.2020 की अधिसूचना सं. एफ.19(44)गृह-5/2020 के माध्यम से जारी राजस्थान राज्य सरकार की सहमति से, सहायक महाप्रबंधक (शाखा प्रमुख), पंजाब नेशनल बैंक, मिड कॉर्पोरेट ब्रांच, चंबर भवन, एम.आई. रोड, जयपुर द्वारा श्री अमरदीप तारद पुत्र श्री ओम प्रकाश तारद, निवासी वार्ड सं. 9, रेलवे स्टेशन के नजदीक, सादुलशहर, गंगानगर, राजस्थान एवं अन्यो के विरुद्ध बैंक के साथ धोखाधड़ी करने और इसे लगभग 380.85 लाख रुपये की सदोष हानि कारित करने के संबंध में दर्ज कराई गई शिकायत दिनांकित 20.05.2020 (सं. सीए 0302020ए0204) से संबंधित अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त राजस्थान राज्य में करती है।

[फा. सं. 228/02/2021-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 19th February, 2021

S. O. 130.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Rajasthan, issued vide Notification No. F.19(44)Home-5/2020 dated 28.12.2020 of Government of Rajasthan, Home (Gr.-V) Department, Jaipur, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Rajasthan for investigation into the offence(s) arising out of the complaint dated 20.05.2020 lodged by Assistant General Manager (Branch Head), Punjab National Bank, Mid Corporate Branch, Chamber Bhawan, M.I. Road, Jaipur against Shri Amandeep Tarad S/o Shri Om Prakash Tarad, R/o Ward No. 9, Near Railway Station, Sadulshahar, Ganganagar, Rajasthan

and others (numbered as CA0302020A0204) pertaining to cheating the Bank and causing wrongful loss to it of approx. Rs. 380.85 lakhs and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/02/2021-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 19 फरवरी, 2021

का. आ.131.—केंद्रीय सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र राज्य सरकार के गृह विभाग, मुंबई के दिनांक 24.12.2020 के पत्र सं. सीबीआई 2020/सी.आर.442/पॉल-2, के माध्यम से जारी सहमति से, भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) की धारा 7 (ए) के तहत दिनांक 28.12.2020 को दर्ज सीबीआई मामला आरसी-0282020ए0004 से संबंधित अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (दिनांक 28.12.2020 से कार्यान्तर प्रभाव से) समस्त महाराष्ट्र राज्य में करती है।

[फा. सं. 228/05/2021-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 19th February, 2021

S. O. 131.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Maharashtra conveyed vide letter No. CBI 2020/C.R.442/Pol-2 dated 24.12.2020 of Home Department, Mumbai, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 28.12.2020) to the whole State of Maharashtra for investigation into the offences(s) relating to CBI Case RC-0282020A0004 registered on 28.12.2020 under section 7(a) of the Prevention of Corruption Act, 1988 (49 of 1988) and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/05/2021-AVD-II]

S. P. R. TRIPATHI, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 18 फरवरी, 2021

का. आ. 132.—केंद्रीय सरकार, तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा (3)(घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा श्री प्रमोद राम जी, महासचिव, श्रमिक विकास परिषद, बरौनी रिफाइनरी, आईओसीएल 20.01.2021 से 19.01.2023 तक या अगले आदेश होने तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड का सदस्य नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त-I]

पेरिन देवी, निदेशक

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 18th February, 2021

S.O. 132.—In exercise of the Powers conferred by Sub-Section (3)(d) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri Pramod Ram Ji, General Secretary, Shramik Vikash Parishad, Barauni Refinery, IOCL as a member of the Oil Industry Development Board w.e.f. 20.01.2021 to 19.01.2023 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-Fin.I]

PERIN DEVI, Director

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 8 फरवरी, 2021

का.आ. 133.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, अंतर्देशीय जल प्राधिकरण भारत, पांडु, गुवाहाटी गुवाहाटी (असम) के प्रबंधन के संबंध में नियोजकों और महासचिव, आई. डब्ल्यू. ए.आई, (असम सेक्टर) मरीन वर्कर्स यूनियन, पांडु रेलवे कॉलोनी, गुवाहाटी (असम) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 02/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को 03.02.2021 को प्राप्त हुआ था।

[सं. एल-42011/13/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 8th February, 2021

S.O. 133.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2019) of the Central Government Industrial Tribunal cum Labour Court Guwahati as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Inland Water Authority of India, Pandu, Guwahati (Assam) and The General Secretary, I.W.A.I (Assam Sector) Marine Workers Union, Pandu Railway Colony, Guwahati (Assam), which was received by the Central Government on 03.02.2021.

[No. L-42011/13/2018 IR (DU)]

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. 02 of 2019

In the matter of an Industrial Dispute between :-

The General Secretary, I.W.A.I (Assam Sector) Marine Workers Union,
Pandu Railway Colony, Guwahati.

...Claimant/ Workman

-Vrs-

The Director, Inland Water Authority of India, Pandu, Guwahati.

...O.P/Management

APPEARANCES

For the Union. : Sri B. Kalita, Secretary Legal, IWAI (Assam Sector) Marine Workers Union
 For the Management. : Mr. S. Dutta, Advocate. Ms. P. Das, Advocate

Date of Award:-25.01.2021

AWARD

1. Vide Memo No. L-42011/13/2018-IR(DU) Dated 02.01.2019 the appropriate Government referred the matter to this Tribunal with the following Schedule:

SCHEDULE

“Whether the demand of the Inland Waterways Authority of India (IWAI) Marine Workers’ Union against IWAI, Guwahati over Non-Payment of Statutory Bonus as per provisions of Section 10 and 11 of Payment of Bonus Act, 1965 for the financial year 2014-15 and 2015-16 to the 116 workers (as per list attached) is legal and justified? If not, what relief the workers are entitled to?”

2. On receipt of the reference, notices were issued to both the parties. The Parties appeared and submitted their respective written statements. The Industrial Dispute was raised by IWAI (Assam Sector) Marine Workers Union, which is herein after referred to as the Union, is a registered Trade Union of the workers employed under IWAI. It is averred in the claim petition that for the payment of bonus for the year 2014-15 the Union issued letters dated 19.10.2015 and 30.12.2015 to the management and again issued reminder of the same in the year 2016. Having found no response from the management the Union lodged a complaint before the Regional Labour Commissioner (Central), Guwahati on 19.12.2016. Thereafter discussion/conciliation on the matter of payment of bonus was initiated but no amicable settlement was arrived at. The matter was thereafter sent to the appropriate Government by the Conciliation Officer with a “failure report” dated 02.01.2019. It is mentioned in the claim statement that in the schedule of the reference order, total 116 workers were mentioned which according to the Union was not correct. It is further stated that the aforesaid list was submitted by the management during the conciliation proceeding. It was further stated that instead of statutory bonus the management had paid some amount in the name of the Non-productivity Linked Bonus (Ad-Hoc-Bonus) granted to the Central Government Employees and placed records of payment of the same in the conciliation proceeding but the workmen did not agree with the same. According to the claim petition as per Section 10 and 11 of the Payment of Bonus Act, 1965 there was a liability upon the management to pay a minimum bonus 8.33% or maximum 20% for earned salary or wages in any establishment where 20 or more persons were employed. The Union has claimed for payment of statutory bonus @ 20% of the earned salary/wages along with compound interest of 15% thereon.

3. The management also submitted their reply in written statement wherein it was stated that the Union did not submit any document to show that the Union was registered. The management submitted that the legal meaning and implication of the various expressions under the payment of Bonus Act, 1965 being a matter of law, the management would give appropriate legal submission at the appropriate time. It was also stated that the workers were not entitled to 20% of the earned salary on wages as bonus along with 15% interest. The management prayed for dismissing the reference with a no relief award.

4. Workman side examined one witness Sri Palash Kalita as Workman Witness No.1 who was at the relevant time i.e. on the day of deposition before this Tribunal was the General Secretary of the Union. He briefly narrated as to how the alleged matter of non payment of statutory bonus was dealt with by the Dy. CLC(C), Guwahati and on failure of conciliation the matter was referred to the appropriate Government. The witness exhibited copies of certain documents of the conciliation proceeding before the Dy. CLC. A copy of the failure report was also submitted by the witness as Exhibit-D. The witness was duly cross-examined by the management side. The witness admitted that he had not produced any document to suggest that Marine Workers Development Society and I.W.A.I (Assam Sector) Marine Workers Union are linked to each other. The witness also admitted that the present dispute has no connection with any previous dispute on payment of bonus raised by the said Society. The witness again reiterated the list of workers attached to the reference but he has further admitted that the Union did not produce any other list before the Tribunal. He has also admitted that the document Exhibit-A does not declare that the concerned workers are entitled to statutory bonus. He categorically admitted that the Union did not submit any list of workers. He also admitted that he has not stated anything in his evidence as to how 20% bonus is payable to the workers.

5. In their written argument the workman side stated that their claim made in the claim petition about the payment of bonus to the workman @ 20% is justified and as per the payment of bonus made to the workers in the concerned management establishment. The management side also submitted a written argument wherein they stated that the documents exhibited by the workman are copies of letter written by the Office of the Dy.

Chief Labour Commissioner, Guwahati to the management and to the Government of India and a copy of minutes of the conciliation meeting held between the parties. According to the management side workman side has miserably failed to establish their rights of payment of bonus @ 20%. They also indicated in their written argument that during cross-examination the workman side admitted that no document was produced to substantiate that the Marine Workers Union and IWAI are linked to each other. It was also indicated in the written argument of the management side that the only witness examined by the workman admitted that the list of workers present with the reference was not correct. On perusal and consideration of the limited evidence available on record and the written submission put forward by the parties it is absolutely clear that the workman side has failed to show as to how they are entitled to payment of bonus @ 20%. It may also be mentioned here that in the last part of the cross-examination the workman witness stated that he did not state anything as to on what basis the bonus @20% is payable to the concerned workmen. The industrial dispute was raised by the Union claiming payment of bonus @ 20% of the wages. So it was their burden to show as to how they were entitled to the same. But no such basic proof was introduced by the workmen side.

6. In view of the above the reference stands disposed of with a no relief Award.

Given under the hand and seal of this Tribunal on this 25th day of January, 2021.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2021

का.आ. 134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आन्ध्रा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 01/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.02.2021 को प्राप्त हुआ था।

[सं. एल-39025/01/2021-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 10th February, 2021

S.O. 134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Andhra Bank and their workmen, received by the Central Government on 10.02.2021.

[No. L-39025/01/2021-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, AT KOLKATA

Application No. CGIT. 01 of 2015

Parties: Sri Dilip Kumar Mondal, Kumar Para Lane,
P.O. and Kasba, Kolkata-700 042

...Applicant/ Employee

AND

1. Andhra Bank, Zonal Office, 4/2-Karya Road Kolkata-700 001

2. General Manager (Staff Department) Central Office, Andhra Bank,
Saifabad, Hyderabad, Andhra Pradesh-500 004

...Opposite Parties/Employers

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance : Sri Vishak Bhattacharya, Advocate

...Applicant

Sri Ranjay De, Advocate

...Opp. Party

AWARD

1. This is an application moved under section 2A of The Industrial Disputes Act 1947 (here-in- after referred as 'The Act' for convenience) by the applicant Sri Dilip Kumar Mondal challenging his termination from service to be unjustified and claiming his reinstatement with full back wages and other consequential benefits.

2. Briefly stated the applicant has claimed himself to be employee of the Bank working as driver since 01.11.1987 at the Zonal Office of the Opposite Party Andhra Bank. He has stated in his statement of claim that he was continuously driving vehicles of the Bank under the control and supervision of the Deputy General Manager and other officers of the Bank. The concerned officials were satisfied with the service of the applicant and accordingly several appreciation certificates were also issued by them, but to utter surprise of the applicant, he was informed in the month of April 2000 during banking hours by the Deputy General Manager Mr. Ramkrishna Reddy not to resume office as his services were not required by them. As such the management terminated service of the applicant with effect from April 2000 under the veil of refusal of employment. The applicant was left with no option but to raise his voice against the illegal termination of service without assigning any reason, without serving any charge-sheet and affording any opportunity of hearing. The applicant also brought the matter to the notice of higher management but they kept mum. Therefore the applicant took up the matter to the Deputy Chief Labour Commissioner where the conciliation proceedings continued for more than 45 days but without any result. Hence the applicant moved this application under section 2A of the Industrial Disputes Act 1947.

3. Denying allegations of the applicant management of the Bank in its reply has pleaded that the application is not maintainable as no employer-employee relationship exists between the opposite party and the applicant. The applicant was personal driver of the executive of the Bank from time to time. He was never employed by the Bank and he was never paid any salary by the Bank. The Bank had no control over the manner of work done by the driver, instead he was working under the control and supervision of the executive. Hence no question of his termination and reinstatement by the Bank arises.

4. The applicant workman has examined himself as W.W.-1 and on behalf of the management M.W-1 Sri Ajay Kumar Dasgupta has been examined. Some documentary evidence have also been filed which shall be taken up at relevant stage.

5. I have learned counsels for both the parties and have gone through the record.

6. Basic question which has arisen for consideration whether there exists relationship of employer and employee between the applicant and the opposite party Bank and what are the test to determine such relationship. While dealing with the question of relationship of employer and employee and the tests to decide the relationship the Hon'ble Apex Court in **Balwant Rai Saluja & Another Vs Air India & Others, 2014 (9) SCALE 567, CDJ 2014 SC 694** has held as follows:

“61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia,

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision, i.e. whether there exists complete control and supervision.

As regards, extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra).”

Above principles have been further reiterated by the Hon'ble Apex court in **Bharat Heavy Electricals Ltd Vs. Mahendra Prasad Jakhmola and Others, LAWS (SC) 2019-II 174**.

7. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact. The issue has to be decided on the basis of pleadings of parties and the evidence adduced by them. The Hon'ble Apex Court in catena of cases has held that where relationship of employer and employee is under challenge, the burden lies on the person who is claiming to be an employee to prove such relationship. In this regard observation of the Hon'ble Apex Court in **Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs State of Tamil Nadu & Ors, 2004, ASCW 973** may be quoted as below-

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

The Hon'ble Court cited with approval the judgment of Hon'ble Calcutta High Court in **Swapan Das Gupta v. The First labour Court of West Bengal** 1976 Lab. I.C. 202. Wherein it has been held that where a

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

8. Similarly Hon'ble High Court of Allahabad has also very lucidly delineated the issue of burden of proof in **U.P. Warehousing Corporation vs Presiding Officer, Industrial Tribunal, CDJ 2013 All HC 64** in following words-

“20. It is settled law that the person who files a claim is required to prove his case. The Industrial dispute was raised at the instance of the union, and even though the provisions of the Evidence Act is not applicable in industrial proceedings, nonetheless, the burden of proof is upon the union and its workers to prove their claim before the labour court.

21. In the instant case, the stand of the union is that its members are employed by the petitioners and that they are being paid the wages through them and that there is a master and servant relationship. Further, they have worked for more than 240 days in each calendar year for 14 years. These facts are required to be proved by oral as well as documentary evidence, and only then, the burden is discharged and the onus shifts upon the employers.”

Thus from the above case laws it is amply clear that the initial burden to prove the relationship of employer and employee lies on the applicant and once this initial burden is discharged, the onus shifts upon the opposite party Bank.

9. In the instant case the case of the applicant is that he had been working in the Bank as driver under the control and supervision of the Bank's officials. Now we have to examine as to how far the applicant has been able to prove the factors enumerated in Balwant Raj Saluja case (supra).

The applicant has examined himself as WW-1 in support of his case. Some quotes from the statement of WW-1 deserve to be reproduced below which have direct bearings on the point in issue--

“I never seen any advertisement of the bank for driving car and I also never applied for any job against any advertisement of the bank.”

“I do not know the process of appointment of bank employee. I know that the Bank is a government undertaking. Except Certificate filed on record, I do not have any record to show that I was a bank employee since 01.11.1997.”

The applicant has file documents Exh-w-1 to vW-12 to show his employment in the Bank, but these documents which are mere certificates issued by the bank officer whose car he used to drive themselves mention that he was a personal driver of the officers. The applicant has expressed his ignorance of the fact that he has been shown personal driver in above documents. The above quoted statement is important to show that except documents Ext. W-1 to W-12 there is no other document to prove his employment.

10. Further on the point of salary WW-1 has stated that

“I do not have any salary slip to show that I get salary from the Bank. The officer used to issue voucher for my salary to the Bank and after submitting that I used to draw my salary from the Bank”

“ Bank employees get salary through credit of their account by the Bank”

11. Thus the applicant was also aware of the difference in mode of payment of salary to the employees of the Bank and to the applicant. Contrary to it the witness examined on behalf of management MW-1 Sri Ajay Kumar Dasgupta has stated that the applicant was a personal driver of the Executive of the Bank. He never applied for any job against any advertisement, he was never paid salary by the Bank. He never worked under the control and supervision of the Bank. It is incorrect to say that the applicant drew salary through voucher. It is noteworthy that the statement of MW-1 has remained uncross-examined. Hence in the totality of facts where admittedly there is no appointment letter in favour of the applicant, there is no evidence that salary was ever paid to the applicant directly by the Bank and no evidence that the applicant was under the control and supervision of the Bank, there can be no other conclusion except that the applicant has failed to establish the relationship of employer and employee between the Bank and the applicant.

12. Where maintenance of the vehicle including fuel was the responsibility of the Bank and the Bank only allowed the officer to draw salary of the driver by way of allowance, the Hon'ble Apex Court in **Punjab National Bank vs Ghulam Dastagir**, AIR 1978 SC 481 observed as below—

“On the other hand, the evidence adduced before the Tribunal oral and documentary, lead only to one conclusion that the Bank made available a certain allowance to facilitate the Area manager, Shri Sharma privately to engage a driver, Of course, the Jeep which he was to drive, its petrol and oil Requirements and maintenance, all fell within the financial responsibility of the Bank. So far as the driver was concerned, his salary was paid By Shri Sharma as his employer who draw the same granted to him by way of allowance from the Bank. There is nothing on record to make out a nexue between the Bank and the driver. There is nothing on record to indicate that the control and direction of the driver vested in the Bank. After all, the evidence is clearly to the contrary. In the absence of material to make out that the driver was employed by the Bank, was under its direction and control, was paid his salary by the Bank and otherwise was included in the army of employees in the establishment of the Bank, we cannot assume the crucial point which remains to be proved. We must remember that there is no case of csnsoufluse or circumvention of any statute. It is not unusual for public sector industry or a nationalized banking institution to give allowances to if. high-level officers leaving it to them to engage the services of drivers or others for fulfilling the needs for which the allowances are meant. In this view, we are clear that he award fails as it is unsupportable...”

13. Similarly in identical set of facts where the petitioner was engaged by the Bank Executive as Personal Driver as per existing Policy of the Bank and was being paid Rs.3,000/- p.m., by him on reimbursement basis, the Hon'ble Madras High Court in **N. Veerappan vs The Chairman And Managing, LAWS (MAD) 2013 9 31** has held that by no stretch of imagination it could be said that the Petitioner was the Employee of the Bank. More so, in the absence of any relationship as Master and Servant between the Bank and the Petitioner. When the petitioner was engaged by the Bank Executive as Personal Driver, then as against the Respondents/Bank, the Petitioner strictly speaking has no legally enforceable right in seeking regularization of his services.

14. In view of above, it is amply clear that the applicant has failed to establish that his service was under control and supervision of the bank and that there exists employer-employee relationship between the Bank and the applicant. Hence the application is liable to be dismissed having no force.

15. The application moved by the applicant Sri Dilip Kumar Mondal under section 2A of the Industrial Disputes Act 1947 is, therefore, dismissed.

16. Award is passed accordingly.

Dated, Kolkata,
The 7th August, 2020

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2021

का.आ. 135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 03/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.02.2021 को प्राप्त हुआ था।

[सं. एल-12012/137/2005-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 10th February, 2021

S.O. 135.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata 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 10.02.2021.

[No. L-12012/137/2005-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**CENTRAL GOVERNMENT OF INDUSTRIAL TRIBUNAL AT KOLKATA****Reference No. 03 of 2006****Parties:** Employers in Relation to the Management Bank of Baroda**AND****The Workman****Present:** Justice Ravindra Nath Mishra

...Presiding Officer

Appearance:

On behalf of the Management : Mr. P. Bhattacharya, learned counsel with Mrs. M. Ghosh, learned counsel

On Behalf of the Workmen : Mr. K.H. Dasan, learned counsel.

State : West Bengal.

Industry: Banking

Dated: 7th August, 2020**AWARD**

1. Bereft of unnecessary details the factual matrix of the case is that the workman concern Sri Jyotirmaoy Basu was appointed as a clerk in Bank of Baroda with effect of 15.12.1980 and was initially posted at GARH NOKHA branch of district Rohtas, Bihar. He was also posted as clerk in Bhawanipore Branch from June 1999 to January 2000 and thereafter he was transferred to Ballygunge branch with effect from 17th January 2000. While he was working in Ballygunge branch Kolkata Police conducted a raid on 6th November on his residence, wherefrom seized certain items including four rubber stamps bearing the impression of bhawanipore Branch of Bank of Baroda, blank letterhead pads with the name and address of the Bhawanipore branch of the bank and certain blank pass books of the bank. The workman concern was arrested. As the conduct of the workman concern was found to be highly suspicious and prejudicial to the interest of the bank involving or likely to involve the bank in serious loss, he was placed under suspension on 27th February 2001 during pendency of criminal proceedings and a departmental enquiry was ordered. Charge-sheet was served and enquiry was conducted in which the workman concerned admitted the unauthorized possession of the letter pads and rubber stamps of the bank but he pleaded inadvertence which was rejected by the enquiry officer. The enquiry officer also concluded that such act of the workman concerned exposed the bank to the high risk and misuse at a later stage may be found to be detrimental to the interest of the bank, but as no such eventuality was specified in the charge sheet he was not in a position to corroborate charges. Hence, the enquiry officer held the charge not established beyond the iota of doubt. The enquiry officer submitted his report to the disciplinary authority who issued notice to the workman concerned on 21st August 2002 along with copy of the enquiry report dt-16.08.2002 to afford an opportunity. The workman concerned submitted his reply against the report on 31st August 2002 reiterating the same reply as submitted against the charge sheet. The disciplinary authority, thereafter, passed order against the workman concerned awarding punishment of removal from service with superannuation benefits and without disqualification from future employment. The workman preferred appeal before the appellate Authority against the punishment order which was also rejected on 07.05.2004. The workman also file a writ petition No.-19453 (w) of 2004 before Hon'ble High Court, Calcutta. However, the Hon'ble High Court refused to interfere and directed the petitioner-workman to avail the remedy provided in the Special Statute. Therefore the workman raised the industrial dispute challenging his removal from service before the regional Labour Commissioner (Central), Government of India. However, consequent upon failure of conciliation proceeding the dispute has been referred by the Government of India in exercise its of powers under section 10(1) (d) and (2A) of the Industrial Disputes Act, 1947 vide order No-L-12012/137/2005-IR (B-II) Dated-20.01.2006 in following words:

“Whether the action of the management of Bank of Baroda, Kolkata Metro Region in imposing the punishment of removal from the Bank's service with superannuation benefits and without disqualification from future employment of Sri Jyotirmoy Basu vide order dated 09.02.2004 is legal and justified ? and if not, to what relief the concerned workman is entitled to ?”

2. After receipt of the order of reference notices were issued to the respective parties whereupon the workman filed his statement of claim that charge-sheet was served upon him during pendency of criminal proceedings containing false and motivated allegations. The enquiry officer submitted his report holding the charge not established beyond the iota of doubt. It is also Pleaded that without giving reasonable opportunity of hearing on his written representation on the enquiry report, the disciplinary authority suddenly by an order

dated 27.09.2003 informed the workman that the disciplinary authority was in disagreement with the findings of the enquiry officer. In course of hearing on 22.01.2004 by the disciplinary authority the workman reiterated his submissions which were made in his representation and also informed the fact of his exoneration from the charges and acquittal by the court of Metropolitan Magistrate, Kolkata but the disciplinary authority without proper consideration and appreciation of above facts and also his past record of unblemished service of 20 years issued the punishment order dated 09.02.2004 in utter violation of the provisions the Bi-partite settlement and principles of natural justice.

3. In reply to the submissions made by the workman in his statement of claim, the management of the bank filed its written statement pleading therein that the raid was conducted by the Kolkata police at his residence in which four rubber stamps bearing the impression of Bhawanipore Branch of the bank, blank letterhead pads with the name and address of the Bhawanipore branch and certain blank passbooks of the bank had been seized and he was arrested by the police. As the conduct of the workman concern was found to be highly suspicious and prejudicial to the interest of the bank likely to involve the bank in serious loss as enshrined in clause 19:5 of Bipartite Settlement, he was placed under suspension on 27th February 2001 during pendency of criminal proceedings and a departmental enquiry was ordered. The senior Manager of College Street Branch was appointed as enquiry officer who after conducting the enquiry submitted his report on 16.08.2002. The enquiry officer recorded that during enquiry the workman admitted the unauthorized possession of the blank letterhead pads, rubber stamps and blank pass books of the bank. The enquiry officer also rejected the plea of inadvertence taken by the workman and opined that such act of workman exposed the bank to high risk detrimental to the interest of the bank, but erroneously recorded that the charge leveled against the workman was not established beyond the iota of doubt which is palpably wrong and in gross contradiction of the findings recorded by the enquiry officer. Hence the disciplinary authority disagreed with the conclusion of the enquiry officer and informed the workman of such disagreement vide order dated 27.09.2003. The disciplinary authority elaborately recorded reasons for the disagreement with the erroneous findings of the enquiry officer. In order to afford an opportunity, the workman was issued a letter dated 21st October 2003 where upon the workman submitted his letter dated 31st October 2003 reiterating his previous representation. Thus at every stage of such disciplinary action, the workman was given all possible opportunities to defend himself and to represent his case. The acquittal of the workman by the Criminal Court has no bearing on the departmental enquiry and the enquiry proceedings are independent of criminal proceeding. Keeping in view the gravity of misconduct of the workman, the punishment impose upon was proportionate.

4. The workman also filed rejoinder to the averment made in the written statement of the management of the bank reiterating the submission made in the statement of claim.

5. On behalf of the workman Sri Jyotirmoy Basu, the workman himself and on behalf of management Sri Umesh Chandra Mohapatra, Regional Manager have been examined.

6. I have heard both the parties.

7. In order to examine the legality and validity of the enquiry a preliminary issue was framed in the following words--

“Whether the enquiry held against Sri Jyotirmoy Basu, the workman concerned is valid and lawful ?”

8. During hearing on the issue of validity of enquiry the workman admitted that the enquiry was validly and legally conducted and the only pertinent question is whether the management has authority to differ with the findings of the enquiry officer which should be considered on merit under section 11A of the Industrial Disputes Act. He has challenged the order of punishment on the ground that the disciplinary authority had no authority to differ with the findings of the enquiry officer and also on the ground that the workman was acquitted of the same charge by the criminal court. This has been countered by the management by the argument that the disciplinary authority can differ with the findings of the enquiry officer after affording opportunity of hearing and that the enquiry proceeding has no bearing with the criminal proceeding and is independent of proceeding.

9. Now on the aspect of binding effect of the findings of the enquiry officer and right of the disciplinary authority to differ with findings of the enquiry officer, the Hon'ble Supreme Court in **High Court of Judicature at Bombay Vs. Shashi Kand S. Patil and another** (2001) 1 SCC 416 has observed that the findings of the Inquiry Officer are not binding on the disciplinary authority and final decision rests with the disciplinary authority, which can come to its own conclusions, bearing in mind the views expressed by the Inquiry Officer, and judicial interference is permissible if there is violation of the natural justice and statutory regulations.

10. The principles was again reiterated by the Hon'ble Apex Court in **Ranjit Singh vs. Union of India & Ors.** [2006 (4) SCALE 154] wherein it has been held:

“.....it is now well settled that the principles of natural justice were required to be complied with by the disciplinary Authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which were in favour of the Appellant. Such findings were required to be over turned by the disciplinary Authority. It is in that view of the matter, the power sought to be exercised by the Disciplinary Authority, although not as that of an appellate authority, but akin thereto. The inquiry report was in favour of the Appellant but the Disciplinary Authority proposed to differ with such conclusions and thus, apart from complying with the principles of natural justice it was obligatory on his part, in absence of any show cause filed by the Appellant, to analyze the materials on records afresh”

11. In the instant case the enquiry report (Ext W-7) discloses that during enquiry the workman had categorically admitted the unauthorized possession of the blank letterhead pads and rubber stamps of the bank. His plea of inadvertence was also rejected by the enquiry officer but it was found that the unauthorized possession of above materials by the workman exposed the bank to high risk to the interest of the bank and miss-use which at the later stage may be found to be detrimental to the interest of the bank. However he was exonerated only on the ground that no such eventualities have been specified in the charge sheet and placed as document. The disciplinary authority did not agree with the findings of the enquiry officer as it was alleged to have not been drawn on logical ground and the enquiry officer had travelled beyond his jurisdiction. Accordingly the disciplinary authority informed the workman the area of his disagreement with the findings vide order dated 27.09.2003 explaining the reasons and rationale for disagreement. The record of enquiry proceeding reveals and is not disputed also that the order dated 27.09.2003 was received by the workman who also submitted his representation on 31.10.2003. He was also given notice for personal hearing on 26.12.2003. Thereafter the disciplinary authority Sri N. K. Kapoor, Deputy General Manager (KMR) passed the order on 09.02.2004 (Ext w-9) imposing punishment of “Removal from the Bank’s Service with Superannuation Benefits and without Disqualification from future employment”. All these facts are not disputed by the workman, instead he challenged the punishment order on the ground that the disciplinary authority had no power to disagree with the findings of the enquiry officer which is not tenable in view of the totality of facts and above pronouncements of the Hon’ble Apex Court.

12. The disciplinary authority has rightly held that the workman cannot claim benefits of his acquittal in criminal case as firstly that charges before the criminal case were different from that framed in the enquiry. Copy of the judgment passed by the criminal court (Ext. W-1) shows that the workman was facing trial before the criminal court for the charges of cheating, forging different bank cash certificate, TDS Certificates and NOC of LIC etc. whereas these issues were never before the enquiry officer. Apart from this there is no legal bar to continue with the enquiry proceeding during pendency of criminal case. In **Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yusuf Miya & Ors.** [15](1997) 2 SSC 699 it has been held that there would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. The legal principle that departmental proceedings can be conducted simultaneously to the criminal trial has been reiterated by the Hon’ble Apex Court in the case of **Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao** (supra), (2012) 1 SCC 442 as follows-

- (a) There is no legal bar for both proceedings to go on simultaneously.
- (b) The only valid ground for claiming that the disciplinary proceedings May be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.
- (c) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.
- (d) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

13. Considering the effect of acquittal in criminal case the Hon’ble Apex Court in **Southern Railway Officers Assn. And Oth Vs. Union of India and Oth.** MANU/ MANU/SC/1489/2009 has observed:

“33. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is not a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.”

Thus it is clear that the contention of the workman that in views of acquittal in criminal case the punishment order is not sustainable, has no force.

14. The next question which comes up for consideration is the scope of judicial interference by the tribunal. Though the tribunal has earlier very little scope to interfere with the findings of the enquiry officer but with insertion of section 11A in the Industrial Disputes Act 1947, the tribunal has acquired **Power to re-appraise the findings** of domestic enquiry. However, the scope to reappraise or re-appreciate is again a matter of controversy, but in catena of cases it has been laid down that reappraisal cannot be that of either original or appellate Court but of revisional Court. In **Calcutta Jute Manufacturing Company Vs State of West Bengal**, 2002 (1) L.L.J 224 (Calcutta High Court) it has been held that—

“6. But that re-appraisal cannot be that of either the original or of an appellate court but of a revisional court. Or in other words it is clothed with the additional power of re-appraisal of evidence with a revisional courts’ outlook. The satisfaction is that of a court scrutinising that of an employer to justify the action. On such re-appraisal it has to satisfy itself that on such evidence the action could be justified. There remains a thin distinction in the exercise of such jurisdiction. In the name of re-appraisal it cannot weigh the evidence in the same manner as an original or appellate court when the enquiry is found to have been held validly”

15. According to section 11A the Industrial Tribunal can set aside the order of discharge or dismissal and direct reinstatement of the workman, if it is satisfied that the order of dismissal or discharge was not justified. In catena of cases, it has been held that the action of the management must conform with proportionality of gravity of the offence.

16. The scope of judicial review by Industrial Tribunal on the point of proportionality has been delineated by the Hon’ble Supreme Court in **Muriadih Colliery Vs. Bihar Colliery Kamgar union**, 2005 (3) SSC as follows-

“It is well established principle in law that in a given Circumstance it is open to the Industrial Tribunal acting under Section 11 (A) of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment.”

17. In **Life Insurance corporation of India vs R. Dandapani**, 2006 (108) F.L.R. 953 the Hon’ble Supreme Court has held that the Tribunal has power to reduce the quantum of punishment, but power under section 11-A has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned.

18. In **Management of Bharat Heavy Electricals Vs M.Mani & Others**, 2018 LLR 2 (SC) Honb’le the Apex Court is of the view that where a department enquiry is held legal and proper the only question remains for consideration is whether the punishment of dismissal is required any interference. Relevant portion of the judgment may be quoted as below:

“18. In other words, the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge levelled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11A of the Industrial Dispute Act, 1947....”

19. The punishment is said to be shockingly disproportionate if the award of punishment is in excess of the allegations made. On the doctrine of Proportionality, the Hon’ble Apex Court in **Coal India Limited v. Mukul Kumar Choudhuri** AIR 2010 SC 75, where the delinquent having remained absent for six months was removed from service after rejecting his resignation, the court said that the punishment was harsh and Shockingly disproportionate to the misconduct as “no reasonable employer would have imposed extreme punishment of removal in like circumstances”

20. Now coming to facts of the present case, the workman was charged with misconduct of un-authorized possession of some blank letterhead pads with name address of Bhawanipore Branch of Bank of Baroda, four rubber stamps bearing impression of the bank and also some blank passbooks of the Bank. The enquiry officer exonerated him on the ground that there was no misuse of above materials by the workman, though concluded that the workman exposed the bank to the high risk and any misuse at a later stage may be found to be detrimental to the interest of the bank. The disciplinary authority, however, did not agree with finding on the ground that the findings of enquiry officer was fallacious in as much as he travelled beyond the allegations levelled in the charge-sheet as there was no allegation of misutilization of above articles in the charge-sheet. Except this there is no reasoning for holding him guilty of misconduct. Now question arises whether the conduct

of the workman was such which deserved extreme punishment and lesser punishment could not have served the purpose. The disciplinary authority has given no reason as to why he chose to impose extreme punishment of removal from service.

21. The Counsel for the management citing **State Bank of India and others vs Bela Bagchi and Others**, MANU /SC/0525/2005 has submitted that the very basis of Banking service is trust and confidence and if anyone is found proved defaulter, integrity is the prime concern while determining the punishment. The relevant portion of the judgment may be quoted as below:

“A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank office. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik*, [1996] 9 SSC 68, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance”

22. It true that there is no substitute for honesty and integrity, but the question is whether the workman ever misused his position or unlawfully authenticated any financial transaction to jeopardize the depositors money. It has come in the enquiry report and it is also admitted case the charges against the workman have nothing to do with financial transaction. However, it is established principle of law that the punishment must commensurate with the magnitude of the misconduct. In this regard observation made by the hon'ble High Court of Gujarat in **H.P.Thakore Vs State of Gujrat**, 1979 (1) L.L.J.339 may be reproduced here---

“5) When different categories of penalties can be imposed in respect of the alleged fault one of which is dismissal from service, the disciplinary authority per force is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concern it would be risky to retain him in Government service, the maximum, penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without jeopardizing the interest of the administration the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask his inner voice and rational faculty whether the penalty lesser than the penalty sought to be imposed can be imposed without jeopardizing the interests of the service.”

23. Admittedly the workman never misused the seized items. Therefore allegation of misuse was not included in the charge-sheet, but while determining the punishment the disciplinary authority was expected to consider not only the past conduct of the workman but also magnitude of the misconduct and to address himself as to why lesser penalty could not have been imposed without jeopardizing the interest of the bank. There is no denial by the management of the averment of the statement of claim that the workman had put in 20 years of unblemished service. Though the conduct of the workman was said to have exposed the bank to high risk and any future misuse may have been detrimental to the interest of the bank, but that alone cannot justify extreme punishment without examining the magnitude of his conduct which is not possible without taking into consideration the fact of misuse of seized items. The future misuse of items is imaginary. The workman worked in Bhawanipore branch of the bank as Clerk from June 1999 to January 2000 and on 17 January 2000 he was transferred to Ballygunj branch. The incriminating materials were seized by the police from his residence on 6th November 2000. Thus the workman was in possession of above materials for approximate 11 months but he is not shown to have authenticated or certified any financial transaction by misusing those materials. There is no allegation of any past misconduct. The unblemished past service record and the fact that he did not misuse the materials to authenticate any financial transaction are relevant factors to be considered by the disciplinary authority while determining the punishment. Thus punishment in this case appears to be excessive punishment as compared to misconduct of the workman. No reasonable person would have imposed such an extreme punishment of removal in given circumstances. Therefore, I have no hesitation to hold that the punishment of removal in present case is shockingly disproportionate to the misconduct. Lesser punishment would have served the purpose.

24. Where the punishment is found to disproportionate to the misconduct, the Tribunal has power under section-11A of the Act of 1947 to substitute a lesser punishment in lieu of the order of removal or dismissal passed by the management of Bank. In **Christian Medical College vs Christian Medical College**, AIR 1988

SC 37 the Hon'ble Apex Court has held that this power of tribunal cannot be considered to be arbitrary. The relevant portion of the Judgment may be reproduced as below---

“Section 11-A which has been introduced since then into the Act which confers the power on the Industrial Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal passed by the management again cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned.”

25. In these circumstances, the order of punishment of removal from service passed by the management of Bank is liable to be set aside and in lieu of that “punishment of reduction to a lower stage in the time scale of pay for five years with cumulative effect, without entitlement to earn increment for this period” may be appropriate punishment. Now after the punishment of removal from service is found not sustainable, the question follows whether re-instatement of the workman is automatic? This question has been considered by the Hon'ble Apex Court in **Jagbir Singh Vs Haryana State Agriculture Board & Another**, 2009 IV-L.L.J 336 that the re-instatement is not automatic.--

7. It is true that earlier view of this court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that 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 to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

26. In the case in hand the workman Sri Jyotirmoy Basu had joined the service of the Bank forty years back in 1980. Taking count of years of his service the workman must have reached the age of superannuation or must be on the verge of superannuation. In both the cases, his re-instatement is not proper. Therefore, I come to the conclusion that instead of granting him relief of reinstatement with back wages, it would be more appropriate to grant him lump sum compensation. In these circumstances.

27. In view of above, the workman Sri Jyotirmoy Basu is entitled to lump sum compensation of Rs. 2,00,000 (Two Lacs only)

28. Award is passed accordingly.

Dated, Kolkata,
The 7th August, 2020

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 11 फरवरी, 2021

का.आ. 136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं 1 धनबाद के पंचाट (संदर्भ संख्या 09/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.02.2021 को प्राप्त हुआ था।

[सं. एल-12011/67/2008-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 11th February, 2021

S.O. 136.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 11.02.2021.

[No. L-12011/67/2008-IR(B-1)]

D. GUHA, 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. 09/2011**

Employer in relation to the management of State Bank of India, Patna

AND**Their workman****Present:** Shri Dinesh Kumar Singh, Presiding Officer**Appearances:**

For Employer : Sri D. K. Verma, Advocate

For workman : Sri Pankaj Mojariwal, Advocate

State : Jharkhand.

Industry:- Banking

Dated : 18.12 .2020

AWARD

By Order No.L-12011/67/2008 (IR(B-I)) dated 17/01/2011, 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 State Bank of India in terminating the services of S/Sh. (1) Ashok Kumar, (2) Pramanand Singh, (3) Satendra Singh, (4) Ajay Prasad Srivastava, (5) Binay Kumar Sinha, (6) Rabindra Kumar, (7) Nand Kishor Ram, (8) Suchita Ram, (9) Jai Prakash Singh, (10) Sunil Kumar, (11) Arjun Kumar Singh, (12) Prabhat Kumar and (13) Vijay Kumar Singh, w.e.f. 02/06/2007, is legal and justified? To what relief the concerned workmen are entitled?”

2. The Tribunal in this matter had passed an award on 24/09/2015 in which it had been held that the management had violated the section 25F of I.D. Act, and the action of the management of SBI Patna in terminating the service of S/Sh (1) Ashok Kmar (2) Pramanand Singh (3) Satendra Singh (4) Ajay Prasad Srivastava (5) Binay Kumar Sinha (6) Rabindra Kumar (7) Nand Kishore Ram (8) Suchita Ram (9) Jai Prakash Singh (10) Sunil Kumar (11) Arjun Kumar Singh (12) Prabhat Kumar and (13) Vijay Kumar Singh w.e.f. 02/06/2007 was not legal and justified. The Tribunal had further directed to reinstate all the concerned workmen in the Bank from the date of receipt of reference but without back wages.

3. The management being aggrieved by the said award filed a writ petition bearing C.W.J.C. No. 8136/2016 before the Hon’ble Patna High Court Patna.

4. The Hon’ble Patna High Court, has been pleased to set aside the said award and remitted back the matter to the Tribunal to dispose of the Reference case on the basis of materials already on record.

5. After production of the order of Hon’ble Patna High Court passed in C.W.J.C. No. 8136/2016 both the parties were heard again.

6. The claim of the Sponsoring Union appearing on behalf of all the thirteen concerned workmen is as follows:-

That all the thirteen concerned workmen namely 1)Ashok Kumar appointed as Messenger on 26/12/1983, 2) Parmanand Singh appointed as Messenger on 07/06/1984, 3) Satyendra Singh appointed as Electrician on 10/07/1987, 4) Ajay Prasad Srivastava appointed as Messenger on 01/08/1987, 5) Binay Kumar Singh appointed as Messenger on 01/08/1987, 6) Rabindra Kumar appointed as Messenger on 08/05/1990, 7) Nand Kishore Ram appointed as Messenger on 09/12/1991, 8) Suchita Ram appointed as Messenger on 22/06/1996, 9) Jay Prakash Singh appointed as Messenger on 02/05/1997, 10) Sunil Kumar appointed as Messenger on 01/07/1997, 11) Arjun Kr. Singh appointed as Messenger on 05/06/1998, 12) Prabhat Kumar appointed as Messenger on 03/07/2000 and 13) Vijay Kr. Singh appointed as Messenger on 10/10/2000 at the State Bank of India, Secretariat Branch, Patna after due interview and after their appointment they had performed full time work for all working days. All the concerned workmen had worked for more than 240 days

in each and every calendar year on the post uninterruptedly, but the Bank Management continued to exploit all the concerned workmen by keeping them on daily wages and paying them at monthly intervals through the name lender (Fake) Contractor Sri Jugeshwar Prasad who was not a Licensee under the Contract Labour (Regulation and Abolition) Act, 1970 and the management of said Bank was not registered under this said Act to employ contract labour in the establishment. All the concerned workman had worked under the control and direction of the said branch Manager of the Bank and the State Bank of India Employees Union (State Bihar) had served a notice upon the Assistant General Manager, State Bank of India, Patna, Secretariat Branch on 03/01/2006, demanding regularisation of all the thirteen subordinate cadre employees working at the said Branch with effect from their respective dates of their initial appointment with all consequential benefits. The Bank Management turned a deaf ear to the demand as submitted by the Union, and subsequently on 20/02/2006 the Union had raised an industrial dispute before the Assistant Labour Commissioner, Patna for regularisation of all the said thirteen subordinate cadre employees in the Bank services. After that the Assistant Labour Commissioner, Patna asked the concerned Branch of the Bank for comments and started a conciliation proceeding under section 112 of the Industrial Dispute Act but in course of pendency of conciliation proceedings the Bank Management terminated the services of all the thirteen workmen/employees w.e.f. 02/06/2007 and the same was brought to the notice of Conciliation Officer on 27.06.2007. The management while terminating the service of the concerned workmen had violated the mandatory provision of section 25 F of the I.D. Act and the action was quite illegal and unjustified. The termination of service of all thirteen concerned workmen/employees during the pendency of the conciliation proceedings was also in violation of section 33 of the I.D. Act. The management of Bank after termination of the all thirteen concerned workmen/employees had appointed thirteen new hands who had been working in place of all the concerned thirteen workmen.

A prayer has been made to decide the present reference in favour of the concerned workmen awarding regularization and reinstatement of their service in the Bank in accordance with law.

7. On the other hand the case of the management in brief as per written statement filed by Assistant General Manager, Patna, State Bank of India is as follows:-

That the reference is bad in law and the dispute referred is not said to be an industrial dispute. The filing of the claim statement duly signed by the General Secretary of State Bank of India is fit to be ignored as General Secretary has no authority to sign the claim of the concerned workmen. The concerned workmen could not have authorized the General Secretary as they were neither the members of the Union nor were eligible to become members of the union. All the concerned workmen were daily wagers and they were working under a contractor. The management used to make payment through the contractor and no appointment letters were issued to the concerned workmen. The concerned workmen had not produced any documents to show that they were working against any sanctioned post and the jobs on which they were working, were of permanent in nature. All the thirteen concerned workman had never been working in the Bank in any capacity as an employee duly appointed after following the rules of recruitment against any sanctioned post as there was no sanctioned post in Bank for any Parking Guard, Electrician or job for incidental work. All the concerned workmen were might be working on the basis of as and when required on contract basis and used to be paid by the contractor on per day basis. The Branch had received three quotations in response to its notice issued on 18/08/1998, for electrical fittings and Sri Satyendra Singh of M/s. Santosh Electricals offered lowest price who agreed to depute some experienced Electrician for maintenance of the electrical fitting of the Bank and he was given a contract for electrical maintenance at the rate of Rs. 2500/- per month from October, 1998. The said contract was renewed from time to time and Satyendra Singh never worked as an employee of the Bank at any time. The other concerned workmen were working either of the aforesaid contractor labour or as an independent contractor for discharge of certain duties and as required on daily wages basis. The contract labour (Regulation and Abolition) Act 1970 does not prohibit engaging persons on contract. A registration or license is required only in case when the number is twenty workmen or more. The daily wager (temporary, adhoc) even assuming that they were working as an employee, they had no legal right to hold the post and also had no right to claim regularization or reinstatement even though they might be working for last few years, so all the concerned workmen are not entitled for any relief from this Tribunal.

The management by way of rejoinder has stated that the statement made in paragraph 1, 2 and 3 of the statement of claim of sponsoring union are matter of record, statement made in paragraph 4 to 9 of the statement of claim of sponsoring union that it was not competent to pursue the case on behalf of the concerned workmen, the statement made in paragraph 10 of statement of claim of sponsoring union are incorrect based on incorrect facts, statement made in paragraph 11, 12 and 13 of the statement of claim of sponsoring union appears to be correct, the statement made in paragraph 14, 15, 16 and 17 of the statement of claim of sponsoring union are incorrect, the statement made in paragraph 18 to 26 of the statement of claim of sponsoring union is incorrect.

8. The Sponsoring Union has filed a rejoinder to the written statement filed by the management State Bank of India in which it has denied almost all the averments made by the management of S.B.I.

9. The Sponsoring Union has examined nine witnesses in support of his case. They are WW-1 Jay Prakash Singh, WW-2 Sachita Ram, WW-3 Parmanand Singh, WW-4 Satendra Singh, WW-5 Binay Kumar Sinha, WW-6 Vijay Kumar Singh, WW-7 Ashok Kumar, WW-8 Prabhat Kumar, WW-9 Sheo Bachan Prasad.

10. The WW-1, Jay Prakash Singh has deposed before the Tribunal that he was one of the thirteen concerned workmen in this reference case and he and others workmen were appointed by Shri Chandra Mohan Prasad, the then Branch Manager of Patna Secretariat Branch, as Messenger in the Branch on 2nd May 1997 after formal interview as he had requisite age and educational qualification for the said post. He has further stated that the management had not allowed him and other workmen to mark their attendance in the attendance register of Bank and the then Dy. Manager Accounts used to keep their attendance marked on a sheet of paper under his seal and signature. He has further stated that the management instead of paying regular wage scale to him and other workmen, had paid daily wages at the rate of Rs. 32.50p on 02/05/1997 which was gradually increased to Rs. 61/- on 07/06/2007 at the time of their retrenchment from service. He has also deposed that the out of said daily wages a sum of Rs. 2/- which was gradually increased to Rs. 3.50p was paid to the said contractor per day per employee as commission and the wage payment was routed through a name lender contractor Sri Jugeshwar Prasad who was not registered as labour contractor under the Contract (Regulation and Abolition) Act. He has further stated that the management was also not holding licence for engaging contractor for Messenger works of Bank. He has further stated that he and other concerned workmen had worked full time in all days of the year except Sunday and holidays, completing 240 days in each and every calendar year under the control and supervision of the Bank's officials and not the so called contractor. He has also stated that the work performed by him and other workmen was of regular messengers of the branch like shifting of ledgers, going outside on official duties, carrying Dak to other branches through peon book or official order. He has also stated that he had been entrusted the work of distribution of Dak through Bank peon book and he had been paid conveyance allowance for outside work of the branch. He has further stated that he had requested the Branch management on several occasions to regularise his service but he had been given only false assurances resulting taking up the matter by State Bank of India Employees Union which had requested the management on 03/01/2006 raising demand for regularisation of their services. He has also deposed that the matter was referred to the Asst. Labour Commissioner (Central) Patna for conciliation proceeding on 20/02/2006 but in the meantime the Bank management had terminated their services on 02/06/2007 without giving them any notice or notice wage. He has also stated that the management had not informed the Conciliation Officer about the termination of their services. He has also deposed that the reference case no. 142/1991 and 149/1991 were decided in favour of the workmen. He has also stated that after their retrenchment the management had appointed thirteen another workmen which showed that the posts, on which he and other workmen were working, were permanent in nature. He has made claim for regularization of his service along with other workmen and reinstatement w.e.f. 02/06/2007. He has also deposed that the Exhibit W-28 is proof of his age and education at the time of his appointment on 02/05/1997. He has also deposed that Exhibit W-8 is his attendance register of the Bank which bears his name and Exhibit W-5 to W-11 are the salary receipt of daily wages as per monthly rate from the Bank. He has also deposed that the Exhibit W-17 series are the payment receipt of conveyance allowance for discharging Bank job, Exhibit W-14 is his dispute raised by the union, Exhibit W-15 is the stand taken by the management and Exhibit W-16 is a copy of judgement of Nagpur branch of Bombay High Court.

In the cross-examination he has deposed that at the time of his appointment as daily wager he was assured by the Branch Manager of the Bank that his service would be regularised if his work would be found satisfactory. He has further deposed that his attendance register is on plain paper whereas the attendance register of permanent employee is of another format. He has also deposed that he was a member of SBI workers union from 2002 but he couldn't remember his membership number. He has further deposed that he had not received any statement of salary or provident fund.

11. The WW-2, Sachita Ram has deposed that on 22nd June 1996 he was engaged to work as a messenger at Patna Secretariat Branch of State Bank of India by the then Branch Manager Sri Madhukar Saheb after finding him eligible to be appointed in the Bank's services. He has further stated that the management treated him as messenger. He has produced the letter dated 10/12/2002 in which his name has been mentioned as Bank's Messenger. He has also produced the gate pass of assembly dated 11/12/2002 in which his name and designation has been mentioned. He has also stated that he was paid daily wages and in a letter dated 07/03/2001 of Bank his designation has been mentioned as daily rated workman. He has also deposed that he was one of seven such workmen who worked in the Assembly vide Bank's Letter dated 10/12/2002 and 17/03/2004. He has further deposed that he had performed duties of messenger, voucher sorting, carrying posted cheques to Passing Officer and other messengers work to the satisfaction of the Officers of Bank. He has also

deposed that the Exhibit W-22 is the Gate Pass issued by the Bank and Exhibit W-8 (nine pages) is the admission of Bank that the workman is daily wager of bank.

In the cross-examination he has deposed that he had neither been given any appointment nor any termination letter by the Bank. He has further deposed that he couldn't file any documents relating to salary which he had received from the Bank from 2004 to 2007. He has further deposed that he was working at Vidhan Sabha Extension Counter of Patna Secretariat Branch and his attendance was taken at Patna Secretariat Branch. He has also deposed that he has no knowledge regarding Bank Circular for regularisation of daily wage worker.

12. The WW-3, Parmanand Singh has deposed before the Tribunal that he was one of the thirteen concerned workman in this reference case and he was eighteen years old and class VIII passed at the time of his appointment at Patna Secretariat Branch on 07/06/1984. He has also deposed that Sri R.P. Singh the then Branch Manager of the Secretariat Branch, SBI had taken his interview and subsequently selected him for the post of Messenger at the Branch on daily wage assuming that his service would be made permanent after sometime. He has also stated that his post and work both were permanent in nature but the Bank did not pay him regular wage scale and other service benefits. He has further deposed that the Bank used to pay conveyance charges to him for going outside the Branch on Bank's duties and the management had given him a chance to be absorbed in permanent cadre. He has also deposed that the Exhibit W-21 is the peon book of the Bank through which he was distributing Bank Daks, Exhibit W-20 is Bank vouchers through which payment was made to him and Exhibit W-19 is a copy of letter written to the Bank by him for making his service as permanent.

In the cross-examination he has deposed that he was working on permanent nature job, so he thought that his post was permanent. He has also deposed that he had appeared in an interview for making his service as permanent but he was not selected. He has denied the suggestion that his claim is not correct.

13. The WW-4, Satyendra Singh has deposed that he was one of the thirteen concerned workman and the management required the services of an electrician to maintain and repair electrical appliance both in the Patna Secretariat Branch premises and Official's residences of the Branch. He has further deposed that he came to know in June 1987 about the requirement of the Bank through a known person and he appeared before Sri R.K. Sinha, the then Branch Manager who asked to obtain a Government Licence for working as electrician and only then he would be given a permanent job. He has also deposed that the then Branch Manager told him that until he got a license, he would have to work as a daily wager. He has also stated that in February 1988 he got himself registered as Electrician by Government of Bihar and subsequently he approached the Bank to regularize his service and to make payment of usual pay scale but the Bank management did not accede to his request and continued to pay daily wages. He has further deposed that the request of the union for regularization of his service had also not been acceded by the Bank management. He has further stated that the Branch Manager of Patna Secretariat Branch of SBI had written several times to the Dy. General Manager of SBI to regularize his service but all went in vain. He has further deposed that he had been paid conveyance charges by the Bank for performing electrician duties at the Officer's Banglows and also for going to electrical goods shops. He has also stated that the Bank Management had sometime paid separately for electrical work of Patna Secretariat Branch, and in the eyes of the Bank he was a staff of Bank as he had been paid staff rate of interest on his fixed deposit with the Bank. He has also stated that there is a regular post of electrician in Bank and Sarvshri Raghunandan, Govind Ram and Md. Shakoor were permanent employees of the Bank. He has proved the electrician pass certificate which is marked as Exhibit W-29. He has also proved letter of union addressed to Bank Management for regularisation of his service which is marked as Exhibit W-2, seven sheets of letter issued by the head office for his regularization as electrician which are marked as Exhibit W-3 series, conveyance charges paid to him by the Bank which is marked as Exhibit W-6, payment of vouchers which is marked as Exhibit W-25 and payment of excess interest on his fixed deposit which is marked as Exhibit W-24.

In the cross-examination he has stated that he had not received any interview letter whereas he joined Bank in July, 1987 and was removed on 02/06/2007. He has further deposed that he was neither given any appointment letter nor termination letter. He has also stated that the Exhibit W-30 is the payment voucher. He has further stated that he had passed class VIII examination and he had no knowledge what was the minimum qualification for becoming an electrician. He had expressed his ignorance about the Exhibit W-2/3. He has further deposed that he had not heard the name of Santosh Electrical and presently persons from Vidut Kendra were looking after the maintenance work of Secretariat Branch. He has further deposed that he had not passed any electrician course from any institute. He has denied the suggestion that he was looking after the D. Generator Set of the Bank. He has also denied the suggestion that he was an electrician under the contractor and to get into the job of bank he has filed his false claim.

14. The WW-5, Binay Kumar Sinha has deposed that he was one of the thirteen concerned workmen in this reference case and Sri Raghuvansh Kumar Sinha, the then Branch Manager of State Bank of India, had taken his interview in his chamber for his appointment to the post of Messenger Staff. He has further stated that he along

with Ajay Prasad Srivastava had appeared in interview on 25/07/1987. He has further deposed that he and Ajay Prasad Srivastava possessed requisite qualification, educational qualification and age for appointment on the post of Messenger and after interview both were asked to join the post of Messenger on 01/08/1987. He has further stated that the Branch Manager had instructed him not to sign on usual attendance register of Branch and had assured him that his service would be regularised later on. He has also stated that on the instruction of the Branch Manager he and Ajay Prasad Srivastava were discharging the work of Messenger as well as Cycle Stand Caretaker on all days of the month. He has also deposed that the management in the name of payment of wages sometimes paid him in the name of cost of tea etc.

In the cross-examination he has stated that on 25/07/1987 he along with five persons attended interview on the verbal order. He has further stated that Sri R.K. Sinha, AGM took their interview and subsequently they joined on 1st August 1987. He has also deposed that no P.F was deducted from his wages, and no salary sheet was issued to him. He has also stated that his attendance was marked on plain paper and he was entrusted to work as messenger and to guard cycle stand close to Bank. He has further stated that his wages were paid by cash and he couldn't say whether the cycle stand contract was given to any outside agency or not. He has further deposed that on 02/06/2007 he was asked to leave the job along with twelve others without giving any written order.

15. The WW-6, Vijay Kumar Singh has deposed that he was one of the thirteen concerned workmen in this reference case and he had been appointed as messenger by the then Assistant General Manager, State Bank of India, Patna Secretariat Branch Sri Shivajee Singh after formal interview on 10/10/2000. He has also deposed that at the time of his appointment his age was about 21 years and 07 months and he was studying in class IX. He has also deposed that he had even performed clerical duties in the Branch like sending thanks letter to the introducers of the Saving Bank Account in the Patna Secretariat Branch. He has also deposed that he has not been gainfully employed presently anywhere and he is dependent on his parents and others.

In the cross-examination he has deposed that he had joined Bank on 10/10/2006 and he came to know that some vacancies were lying in the Bank in which he appeared for interview. He has further deposed that he was working on each working day in Bank except public holidays and he was also carrying out orders of official. He has further stated that his service was terminated on 02/06/2007. He has also stated that his name is mentioned on serial no. 3 of Exhibit W-11.

16. The WW-7, Ashok Kumar has deposed that he was one of the concerned workmen in this reference case and he was appointed in the Bank service on 26/12/1983. He has also deposed that his name has been mentioned as serial no. 1 of Exhibit W-14 and Exhibit W-1 series are proof of his working in the Branch. He has also deposed that he worked in the bank like other permanent Class-IV employees but he was not paid regular pay scale and other privileges.

In the cross-examination he has stated that he was appointed as per verbal order of Bank Official, as messenger and not as a daily wagger. He has further deposed that he was terminated on 02/06/2007 by verbal order.

17. The WW-8, Prabhat Kumar has deposed that he was one of the concerned workmen in this reference case and he was engaged as messenger at Patna Secretariat Branch on 03/07/2000 after finding him fit for the job by the management. He has also deposed that his date of birth is 05/02/1977 and he had studied till class-VIII as per Exhibit W-27. He has also deposed that Exhibit W-27 series and Exhibit W-12 series are proof of his working in Patna Secretariat Branch of SBI. He has further deposed that his claim is similar to that of Sri Jai Prakash Singh, WW-1.

In the cross-examination he has deposed that he was verbally appointed by Bank Official as messenger and not as a daily wagger. He has also deposed that his work was similar to other workmen and he was not getting his wages on daily basis but was getting his wages on monthly basis. He has also stated that he was never entrusted to guard cycle stand attached to the Bank. He has also deposed that he was terminated by verbal order. He has denied the suggestion that he had not worked for 240 days in a calendar year.

18. The WW-9, Sheo Bachan Prasad has deposed that he was earlier employed at State Bank of India, Patna Secretariat Branch and at present posted at its S.K. Puri Branch in subordinate cadre. He has also stated that his service was exactly similar to those of thirteen concerned workmen in this reference case. He has further deposed that his daily wage service was terminated by the management of Bank along with four others without notice or retrenchment compensation. He has also deposed that an Award in favour of the workmen was rendered on 02/03/2001 in reference case no 140/1991 and the management reinstated and regularized their service in subordinate cadre w.e.f. November 1991. He has also deposed that the work and duty hours rendered by him at Patna Secretariat Branch stood on the similar footing as that of the present thirteen workmen. He has also deposed that he and four other workmen were paid salary by the management as per Exhibit M-3. He has

also deposed that all the concerned workman were performing all duties as entrusted to them by the management. He has further deposed that he was initially appointed in Patna Secretariat Branch in the year 1984 as per verbal order but he was terminated by Bank Management. He has also stated that he had filed a case for regularization in CGIT and he was subsequently regularized as regular worker.

In the cross-examination he has deposed that he was not aware of circular for regularization of the daily wager workman into permanent cadre in the year 1996 to 1997.

19. The concerned workman has proved the following documents which are marked as:-

Exhibit W-1 Series- Documents of workman Ashok kumar

- A. The Photo Copy of School Transfer Certificate of Ashok Kumar.
- B. Photo Copy of an application of Ashok Kumar and Parmanand Singh addressed to the D.G.M., SBI, Patna Circle, Patna.
- C. Photo Copy of Payment Vouchers (total four sheets).
- D. Photo Copy of Gate Pass dated 10.12.90.
- E. Photo Copy of authorization Letter dated 27.11.90.

Exhibit W-2 Series- Documents of workman Parmanand Singh

- A. Photo Copy of School Transfer Certificate of Parmanand Singh.
- B. Photo Copy of Application of Ashok Kumar and Parmanand Singh addressed to the D.G.M., SBI, Patna Circle, Patna.
- C. Photo Copy of an application of Parmanand Singh for issuance of Experience Certificate.
- D. Photo Copy of Peon-Book (total two sheets).
- E. Photo Copy of Payment Voucher of 1987 and 1988 (total two sheets).

Exhibit W-3 Series- Documents of Satyendra Singh

- A. Photo copy of School Transfer Certificate of Satyendra Singh.
- B. Photo Copy of letter dated 31.03.1998 regarding demand raised by Union.
- C. Photo Copy of an application dated 23.08.1988 of Satyendra Singh for issuance of Experience Certificate.
- D. Photo Copy of Letter dated 21.12.1995 addressed to Satyendra Singh by the A.G.M., Patna.
- E. Photo Copy of a Letter dated 08.07.1993 of A.G.M., Patna.
- F. Photo Copy of a Letter dated 03.07.1996 of A.G.M., SBI, Patna (total two sheets).

Exhibit W-4 Series- Documents of Ajay Prasad Srivastava

- A. Photo Copy of payment vouchers of Ajay Prasad Srivastava (total two sheets).
- B. Photo Copy of application dated 20/09/1990 for payment.
- C. Photo Copy of list of payment of daily wages of August & Nov. 1993, Oct 2000, Feb 2001 and May 2002 (total six sheets).

Exhibit W-5 Series- Documents of Vinay Kumar Sinha

- A. Photo Copy of Admit Card of Vinay Kumar Sinha
- B. Photo Copy of Payment Vouchers of Vinay Kumar Sinha (total two sheets).
- C. Photo Copy of one page of peon-book.
- D. Photo Copy of voucher relating to postal charges and conveyance expense.
- E. Photo Copy of list for payment of daily wages to workmen of year 2001, 2002, 2004, 2005 and 2006 (total five sheets).
- F. Photo Copy of pages of attendance register of July, 2003, Sept. 2003 (total two sheets).

Exhibit W-6 Series- Documents of workman Rabindra Kumar

- A. Photo Copy of Bankers Cheque dated 9.10.1996 and dated 10.5.2001 of Rabindra Kumar (total two sheets).
- B. Photo Copy of payment vouchers of Rabindra Kumar (total four sheets).
- C. Photo Copy of Authorization Letter.
- D. Photo Copy of Lists of payment to daily wages of 1993, 1997, 1998, 1999, 2000, 2001 and 2002 (total seven sheets).

Exhibit W-7 Series- Documents of Nand Kishor Ram

- A. Photo Copy of School Transfer Certificate of Nand Kishor Ram.
- B. Photo Copy of payment vouchers of Nand Kishore Ram of Sep 1992, Feb 1997, Feb 1999 and May 2000 (total four sheets).

Exhibit W-8 Series- Documents of workman Sachita Ram

- A. The Photo Copy of the School Transfer Certificate of Sachita Ram.
- B. The Photo Copy of Letter dated 26.11.05, 17.03.2004, 18.06.2003 and 10.12.2002 of A.G.M., SBI, Patna along with Gate Passes issued under the signature of Secretary, Bihar Vidhan Sabha (total eight sheets).

Exhibit W-9 Series- Documents of Jay Prakash Singh

- A. Photo Copy of a Letter addressed to the Dy. S.P. of Sachivalay Premises, Patna.
- B. Photo Copy of payment vouchers of 2002 (total two sheets).
- C. Photo Copy of Distributions Slip dated 22.11.2005 and 23.11.2005 (total two sheets).
- D. Photo Copy of Transit Voucher Book.
- E. Photo Copy of Pages from peon book of year 2001, 2002 and 2003 (total three sheets).

Exhibit W-10 Series- Documents of workman Sunil Kumar

- A. Photo Copy of payment voucher of 1997 of Sunil Kumar.
- B. Photo Copy of list showing payment of daily wages during month of December 1998, July 1999, November 2000, February 2001 and March 2002 (total five sheets).

Exhibit W-11 Series- Documents of workman Arjun Kumar Singh

- A. Photo Copy of School Transfer Certificate of Arjun Kumar Singh.
- B. Photo Copy of payment voucher of Arjun Kumar Singh dated 14.5.2002.
- C. Photo Copy of list showing payment of workmen during Feb., 1999, Nov., 2000, Feb., 2001, 27.3.2002 to 30.4.2002, April., 2003 and Oct., 2004 (total six sheets).

Exhibit W-12 Series- Documents of workman Prabhat Kumar

- A. Photo Copy of payment Voucher dated 24.8.2000, 25.8.2000, 9.1.2001 and 10.1.2001 (total two sheets).
- B. Photo Copy of Cheque dated 12.4.2001.

Exhibit W-13 Series- Documents of workman Vijay Kumar Singh.

- A. Photo Copy of payment voucher dated 10.2.2003, 28.2.2003 and 31.3.2003 (total three sheets).
- B. Photo Copy of lists showing payment to workmen during Oct., 2001 July, 2002 and June, 2003 (total three sheets).

Exhibit W-14 - Xerox Copy of State Bank of India Employees Union (Bihar State) letter no. GS/001 dated 3.1.2006 to Assistant General Manager, State Bank of India, Patna Secretariat Branch.

Exhibit W-15 - Xerox Copy of Union's letter no. GS/114 dated 27.6.2007 to Assistant Labour Commissioner (Central) Patna.

Exhibit W-16 - A. Xerox Copy of Union's letter no. GS/201 dated 07/09/2007 to the ALC (Central) Patna.

B. Xerox Copy of Thank's Letter sent by the management to the introducers of the account filed by Sri Vijay Kumar Singh, the concerned workman.

Exhibit W-17 series- Xerox Copy of Petty cash vouchers giving cash payment to Jay Prakash Singh for the month of Oct 1999 and Dec 2000.

Exhibit W-18 - Xerox Copy of Attendance sheet of September 2003 of all concerned workmen.

Exhibit W-19 - Xerox Copy of Interview letter dated 27/03/1997 issued to Parmanand Singh for appointment as permanent employee.

Exhibit W-20 series- Xerox Copy of Petty Cash vouchers showing conveyance charges paid to Parmanand Singh for the month of Oct 1987 and March 1988.

Exhibit W-21 - Xerox Copy of Peon Book of 1994 showing Parmanand Singh as Bank's Messenger.

Exhibit W-22 series- A. Xerox Copy of Gate Pass issued to Sachita Ram on 11/12/2002 showing him as Bank's orderly (Messenger).

B. Xerox Copy of Bank's letter dated 10/12/2002 mentioning Sachita Ram as Bank's orderly (Messenger).

C. Xerox Copy of Bank's letter dated 17/03/2004 mentioning Sachita Ram as Bank's daily wager.

D. Xerox Copy of Lincense issued by Government of Bihar on 15/02/1988 for working as electrician to Satyendra Singh.

Exhibit W-23 series- A. Xerox Copy of Bank's letter dated 04/07/1992 about the satisfactory work of Satyendra Singh.

B. Xerox Copy of letter dated 07/01/1992 of D.G.M., SBI, Patna about good services of Satyendra Singh.

C. Xerox Copy of Bank's letter dated 21/03/1992 attesting the signature of Satyendra Singh as Bank's Electrician.

Exhibit W-24 - Xerox Copy of Fixed Deposit Receipt No. 809504 dated 19/04/1990 in the name of Satyendra Singh as Staff of S.B.I.

Exhibit W-25 series- A. Xerox Copy of Voucher for payment of Rs. 540/- by the Bank to Satyendra Singh.

B. Xerox Copy of Conveyance Charges paid to Satyendra Singh by vouchers in the year 1987, 1988, 1989, 1990 and 1995 (total five sheets).

Exhibit W-26 series - Xerox Copy of Petty Cash payment vouchers dated 19/1/1994 and 17/03/2003 issued in favour of Nand Kishore Ram.

Exhibit W-27 series- A. Xerox Copy of School Transfer Certificate dated 10/05/2002 of Prabhat Kumar.

B. Xerox Copy of Conveyance paid vouchers dated 17/12/2002 and 30/12/2002 to Prabhat Kumar by S.B.I, Pana.

Exhibit W-28 - Xerox Copy of School Transfer Certificate dated 15/01/1994 of Jay Prakash Singh.

Exhibit W-29 series- Xerox Copy of Permit for working as electrician to Satyender Singh (total four sheets).

Exhibit W-30 - Xerox Copy of Payment vouchers of Satyendra Singh.

Exhibit W-31 - Xerox Copy of School Transfer Certificate of Vijay Kumar Singh.

Exhibit W-32 - Xerox Copy of School Transfer Certificate of Ajay Prasad Srivastava.

Exhibit W-33 - Xerox Copy of Thanks Letter issued to customer by the SBI, Patna Secretarial Branch. \

20. The management has examined only witness. He is MW-1, Dinesh Kumar.

21. The MW-1 Dinesh Kumar has deposed that the no any appointment letter had been issued to all the thirteen concerned workmen and in the records of the Branch there is no attendance sheet on the basis of which all the concerned workman have been claiming to have worked for years together. He has also deposed that the concerned workmen were engaged on daily wages and casual basis by the Branch as per need based and engaged through different contractors and in that way they had never discharged their duties continuously for 240 days. He has further deposed that the Branch maintains an Attendance Register for all permanent Award Staff (clerical & Subordinate) and attendance of the staff were never marked on plain paper. He has also deposed that no record is available in the Branch showing working of all the thirteen concerned workmen. He

has further stated that there was no sanctioned post and no any termination letter was issued to them for discontinuation of engagement as daily wager. He has further deposed that the Patna Secretariat Branch of SBI has not sanctioned post for engagement of cycle stand guard/electrician and other incidental job which are not related to the Banking Business. He has further stated that M/s. Santosh Electricals was given contract of electrical maintenance while the maintenance of cycle shed was entrusted to Contractor Jugeshwar Prasad and Exhibit M-1 series and Exhibit M-2 series are the supporting documents in this regard. He has deposed that Branch Manager is not competent authority to appoint any subordinate staff on his own as there are rules for recruitment for appointment on permanent or temporary staff. He has also deposed that salary sheets are given to the permanent employee in Bank and P.F. is deducted from in salary every month.

In the cross-examination he has deposed that he has no personal knowledge of this case and whatever he has deposed is on the basis of records. He has deposed that he has not seen Shastri Award which governs the service conditions of Bank employees. He has further deposed that there is no circular of Bank to appoint casual workers. He has also deposed that he could not say whether the Bank used to engage workers from licensed contractors or not. He has further stated that he had not seen any record to show that the concerned workman had worked for less than 240 days in one calendar year. He has further deposed that he could not say that the present workmen were engaged by Bank from licensed contractors or unlicensed contractors.

22. The management has proved the following documents which are marked as:-

Exhibit M-1 series- Letter no DGM/15/324 dated 23/11/2005 pertaining to annual maintenance contract for cycle stand issued by Asst. General Manager for control purposes to DGM Patna Zone and other similar letters written both by the bank and the contractor namely Sri Judeshwar Prasad and office notes of SBI.

Exhibit M-2 series- Agreement in respect of electrical maintenance of Patna Secretariat Branch awarded to Santosh Electricals dated 01.08.2003 in total two pages, Signature of S.Singh (Exhibit M-2/1), Office note duly approved dated 26.08.2004 (Exhibit M-2/2), Letter no DGM/15/249 dated 29.7.2003 (Exhibit M-2/3), letter no. AGM/42/15/130 dated 18/07/2000, letter no. AGM/40/221 dated 17.10.1998 and note dated 16.10.1998.

Exhibit M-3- A copy of the additional salary paid to subordinate cadre employees from 20.04.2001 to 10.12.2001 of S.B.I. Secretariat Branch of SBI (total names five employees in the subordinate cadre).

23. The learned lawyer of the sponsoring union/concerned workman has submitted before the Court that all the concerned workmen had been appointed by the State Bank of India, Patna branch against the vacant sanction post for discharge of official duty of Bank since 1983 and in this way all the concerned workmen had worked for more than 240 days in a calendar year. He has further submitted that the sponsoring union has filed a representation of the workmen before the management for regularisation of all the thirteen Subordinate Cadre employees and on finding that no action had been taken on representation of the sponsoring union, an industrial dispute was raised but in course of conciliation proceedings the management terminated all the concerned workmen/employees in violation of section 33 of the I.D. Act and in violation of section 25 F of the I.D. Act. He has made prayer to hold the action of the management in terminating of all the concerned workmen as illegal and unjustified.

24. On the other hand the learned lawyer of the management has submitted before the Tribunal that all the concerned workmen had never been appointed by the State Bank of India, Secretariat Branch, Patna and the concerned workmen had not produced any appointment letter showing their appointment as an employee of the Bank. He has also submitted that the concerned workmen have not produced any documents, to show that they were working against sanctioned post. He has also argued that the concerned workmen namely Satyendra Singh had submitted a quotation in response to notice of the Bank dated 18/08/1998 for maintenance of electrical fitting and his quotation was of lowest price, so he was given the contract for electrical maintenance at the rate of Rs. 2500/- per month. He has also argued that the Contract Labour Act (Regulation and Abolition) Act 1970 does not prohibit engagement of any person on contract. He has also argued that the daily wager (temporary/adhoc) worker have got no right to hold the post and they have no right to claim regularization and reinstatement even though they might have been working. He has made prayer to pass an Award in favour of management of SBI, Patna.

25. Now, the only point of consideration in this case is whether the management of SBI, Patna, Secretariat Branch in terminating the services of all the concerned workmen is legal and justified and to what relief they are entitled to?

FINDINGS

26. At the outset of discussion it is required to mention here that in this case the Ministry of Labour and Employment Govt. of India has referred the matter with regard to thirteen workmen but the sponsoring union has examined only nine witnesses out of which the name of WW-9, Sheo Bachan Prasad is not figured in the list

of referred workmen and in this way the concerned workmen namely Rabindra Kumar, Nand Kishore Ram, Ajay Prasad Srivastava, Sunil Kumar and Arjun kr. Singh were not examined before the Tribunal. Moreover no explanation has been given by the sponsoring union about the reasons of their non examination before the Tribunal.

27. It is required to mention here that all the concerned workmen namely 1) Ashok Kumar, 2) Parmanand Singh, 3) Rabindra Kumar, 4) Nand Kishore Ram, 5) Suchita Ram, 6) Jay Prakash Singh, 7) Sunil Kumar, 8) Arjun Kumar Singh, 9) Prabhat Kumar and 10) Vijay Kumar have claimed themselves to be appointed on the post of messenger of the State Bank of India, Secretariat Branch, Patna and they had discharged the duties in the Bank. Further the workman Satyendra Singh has claimed himself to be appointed as an electrician for maintaining the electrical works in the Bank and the workman namely Ajay Prasad Srivastava and Binay Kumar Sinha have claimed themselves to be appointed as messenger as well cycle stand care taker.

28. Now, the Tribunal will examine the oral as well as documentary evidence of both the parties in this case in the light of the schedule of the case.

29. The WW-1, Jay Prakash Singh in his evidence has categorically deposed that he was appointed as messenger at the SBI, Patna, Secretariat Branch on 02/05/1997 after formal interview but he was paid daily wages of Rs. 32.50/- on 02/05/1997 which was gradually increased to Rs. 61/- on 07/06/2007 at the time of retrenchment. He has also stated that he had worked full time on all days of the year except Sunday and holidays, completing 240 days in each and every calendar year but his service was terminated on 02/06/2007 without giving them any notice or notice wages. In his cross-examination his deposition that his engagement as daily wages has not been impeached. Further he has also stated that he had not received any salary or P.F. statement.

The WW-2, Sachita Ram has also stated that he was engaged to work as a messenger in Patna, Secretariat Branch of SBI by the then Branch Manager on 22/06/1996 but the management used to pay him daily wages. He has also stated that he was all along posted at Bihar Vidhan Sabha (Assembly) along with six others workmen vide Bank's letters dated 10/12/2002 and 17/03/2004 and he had performed the duties of messenger, voucher shorting and other works in the Bank. In the cross-examination there is nothing to disbelief his statement regarding his engagement in Bank. Moreover he has admitted that he had neither been given any appointment letter nor termination letter by the Bank, and he was working at Vidhan Sabha Extension Counter, Patna Secretariat Branch.

Further the WW-3 Parmanand Singh has stated before the Tribunal that he was appointed at Patna Secretariat Branch of SBI on 07th June 1984 on the post of messenger as daily wager. He has further stated that the post and work were of permanent nature but the Bank did not pay him regular wages. He has proved photo copy of peon book which is marked as Exhibit W-21 series. He has also proved Bank vouchers of different dates which are marked as Exhibit W-20 series and photo copy of letter issued by the Bank to him regarding interview on 28/03/1997 which is marked as Exhibit W-19. In the cross-examination he has stated that he was working on a permanent nature job and he had appeared in interview for permanent appointment but he was not selected.

Moreover the WW-4 Satyendra Singh has deposed that he was working as electrician for maintaining and repairing electrical appliances both in Patna Secretariat Branch premises and official residences of the Branch. He has also deposed that he had been asked by the then Branch Manager to work as electrician as daily wager. He has also deposed that the Branch Manager of Patna Secretariat Branch of SBI had written several letters to Deputy General Manager, SBI for regularization of his services but all in vain. In the cross-examination he has stated that he had not received any interview letter and he joined the Bank in July 1987 whereas he was removed from service on 02/06/2007. He has also deposed that he was neither given any appointment letter nor termination letter. He has further deposed that he had not heard the name of Santosh Electrical.

Further, the WW-5 Binay Kumar Sinha has deposed that he was appointed on the post of messenger staff of the State Bank of India after taking his interview on 25/07/1987. He has also stated that Ajay Prasad Srivastava had also appeared in the interview and he and Ajay Prasad Srivastava were asked to join the post on 1st August 1987. He has further deposed that he and Ajay Prasad Srivastava were discharging the work of messenger as well as cycle stand caretaker on all days of the month and the management used to make payment to him in the name of cost of tea. In the cross-examination he has stated that on 25/07/1987 he along with five persons attended the interview on verbal order and Sri R.K. Sinha, A.G.M took their interview. He has deposed that on 1st August 1987 he joined his duty but no P.F was deducted and no salary sheet was issued to him. He has further stated that he was entrusted to work as messenger and also as guard of cycle stand close to Bank. He has deposed that he couldn't say whether the cycle stand contract was given to any outside agency. He has further stated that on 02/06/2007 he was asked to leave the job along with twelve others.

The WW-6 Vijay Kumar Singh has deposed that he was appointed by the then Assistant General Manager, State Bank of India, Patna Secretariat Branch after formal interview on 10/10/2000 and he had performed clerical duties for sometimes in the Branch like sending thanks letter to the introducers of Saving Bank account holder. In the cross-examination he has deposed that he had joined Bank on 10/10/2000 and he had appeared for interview for some vacancies in the Bank. He has deposed that he had worked in the Bank but his service was terminated on 02/06/2007.

The WW-7 Ashok Kumar has deposed that he was appointed in the Bank on 26/12/1983 and he had worked in the Bank like other permanent class IV employees but he was not paid regular pay scale and other privileges. In the cross-examination he has deposed that he was appointed as per the verbal order of the Bank official as messenger and not as daily wage but his service was terminated on 02/06/2007 by verbal order.

The WW-8 Prabhat Kumar has deposed that he was engaged as messenger at Patna Secretariat Branch on 03/07/2000 after finding him fit for job. In the cross-examination he has deposed that he was verbally appointed by the Bank official as messenger and not as daily wage. He has further stated that his work was similar to other workmen and he was getting wages on monthly basis. He has further deposed that his service was terminated by the verbal order.

Lastly the WW-9 Sheo Bachan Prasad has deposed that his service was exactly similar to those concerned workmen in this reference case and his daily wage service was terminated by the management of Bank along with four others without notice or retrenchment compensation. He has further deposed that an Award was passed in his favour on 02/03/2001 and management reinstated and regularized their service in subordinate cadre w.e.f. November 1991. In the cross-examination he has deposed that he was not aware of the circular regarding regularization of daily wage workman.

30. Now, coming to the documentary evidence of sponsoring union it appears that Exhibit W-1 series are documents of concerned workman namely Ashok Kumar which consists of photo copy of his School Transfer Certificate, photo copy of representation of his and Parmanand Singh to the Deputy General Manager, State Bank of India for their regularization of services and photo copy of payment vouchers. Further the Exhibit W-2 series are documents of workman Parmanand Singh which consist of photo copy of his School Transfer Certificate, photo copy of representation addressed to DGM, Patna, photo copy of application dated 22/08/88 for issuance of experience certificate, photo copy of peon books total two sheets and photo copy of payment vouchers of the year 1997 and 1998 (two sheets). The Exhibit W-3 series are documents of concerned workman namely Satyendra Singh which consist of photo copy of his School Transfer Certificate, photo copy of his application dated 23/08/88 for issuance of experience certificate, photo copy of letters issued to Deputy General Manager for sanction of the post of electrician and absorption of Satyendra Singh against this post and photo copy of representation of union regarding absorption of Satyendra Singh. The Exhibit W-4 series are documents of Ajay Prasad Srivastava which consist of photo copy of payment vouchers and details of payment made to the workers in the month of November, August 1993, May 2002, February 2001 and October 2000. The Exhibit W-5 series are documents of Binay Kumar Sinha which consist of the photo copy of his Admit Card of Bihar School Examination Board, photo copy of payment voucher dated 24/09/1990, 15/09/1990, 13/01/2005 and details of payment to workmen for the month of February 2001, April 2002, December 2004, December 2005 and January 2006 and attendance register of period July 2003. The Exhibit W-6 series are documents of workman Rabindra Kumar which consist of photo copy of two banker's cheques, photo copy of payment vouchers (four sheets), list of payment for the month of September 1993, May 1997, December 1998, January 1999, November 2000, February 2001 and March 2002. The Exhibit W-7 series are documents of Nand Kishore Ram which consist of his photo copy of school transfer certificate and payment vouchers as rikshaw fare/labour charges for the month of September 1992, February 1997, February 1999 and May 2000. The Exhibit W-8 series are documents of workman Sachita Prasad which consist of photo copy of his School Transfer Certificate, photo copy of request letter dated 26/11/2005, 17/03/2004, 18/06/2003 and 10/12/2002 of Branch Manager addressed to Secretary Bihar Legislative Assembly along with photo copy of entry pass issued to Sachita Ram mentioning his designation as daily wage. Exhibit W-9 series are documents of Jay Prakash Singh which consist of authorization letter issued by Assistant General Manager, mentioning there in that Jay Prakash Singh would be allowed to distribute new year greetings card in Sachivalaya premises, payment vouchers for the month of September and October 2002 and distribution slip, photo copy of transit voucher and photo copy of pages of peon book. The Exhibit W-10 series are photocopy of documents of concerned workman namely Sunil Kumar consisting payment vouchers of year 1997 and payment details of workmen for the month of December 1998, July 1999, November 2000, February 2001 and March 2002. The Exhibit W-11 series are documents of workman Arjun Kumar Singh consisting of photo copy of his School Transfer Certificate, payment of rikshaw fare voucher dated 14/05/2002 and details of payment made to the workmen for the month of February 1999, November 2000, February 2001, March-April 2002, April 2003 and October 2004. Exhibit W-12 series are documents of Prabhat Kumar consisting of photo copy of payment vouchers dated 24/08/2000, 25/08/2000,

09/01/2001 and 10/01/1991 of labour charges for transporting box to Vidhan Sabha Legislative Assembly, photo copy of banker's cheque dated 12/04/2001 showing payment of Rs. 135/-. The Exhibit W-13 series are documents of workman Vijay Kumar Singh consisting of payment voucher dated 31/03/2003 of labour charges, payment voucher dated 10/02/2003 as rikshaw fare, payment voucher dated 28/02/2003 and details of payment to workmen for the month of October 2001, July 2002 and June 2003. Exhibit W-14 is a representation of General Secretary, State Bank of India Employees Union for Regularization of all the thirteen workmen. Exhibit W-15 is a letter addressed to Assistant Labour Commissioner regarding raising of industrial dispute. Exhibit W-16 is a representation of General Secretary, SBI Employees Union to the Assistant Labour Commissioner, Patna. Exhibit W-17 series are of four pages regarding receipt of payment by Jay Prakash Singh. Exhibit W-18 is an attendance register of September 2003. Exhibit W-19 is a letter issued by State Bank of India to Parmanand Singh for appearing before Interview Board on 28/03/1997. Exhibit W-20 series are Petty Cash vouchers showing conveyance charges paid to Jay Prakash Singh. Exhibit W-21 is a photo copy of peon book. Exhibit W-22 series are entry pass issued by Bihar Legislative Assembly to Sachida Ram showing him as an orderly of State Bank of India and request letters of State Bank of India to Secretary Bihar Legislative Assembly for issuance of entry pass with the official of Bank including Sachida Ram and photo copy of licence dated 15/02/1988 issued to Satyendra Singh for working as electrician. Exhibit W-23 series are letter issued by Assistant General Manager to DGM on 04/07/1992 regarding satisfactory work of electrician Satyendra Kumar Singh, letter dated 07/01/1992 of Deputy General Manager regarding approval for engaging Satyendra Singh as an electrician for maintenance and letter of Branch Manager to M/s. Laxmi Electricals for supply of certain electrical item. Exhibit W-24 is deposit of Rs. 10,000/- in the State Bank of India. Exhibit W-25 series are the payment voucher of Rs. 540/- for repairing work to Satyendra Kumar Singh and payment voucher of conveyance charges paid to him. Exhibit W-26 series are the petty cash vouchers dated 19/01/1994 and 17/03/2003 in favour of Nand Kishore Ram. Exhibit W-27 series are School Transfer Certificate of Prabhat Kumar and conveyance vouchers in favour of Prabhat Kumar. Exhibit W-28 is the Photocopy of school transfer certificate of Jay Prakash Singh. Exhibit W-29 series are the licence of electrician. Exhibit W-30 is the payment voucher of Satyendra Singh, Exhibit W-31 is the photo copy of School Transfer Certificate of Vijay Kumar Singh. Exhibit W-32 is the photo copy of School Transfer Certificate of Ajay Prasad Srivastava and Exhibit W-33 is the photo copy of letter of thanks issued by the Branch of the Bank.

31. The MW-1, Dinesh Kumar has stated that no any appointment letter had been issued to the thirteen concerned workman and there is no attendance sheet available in the record of Branch. He has also stated that all the concerned workman were engaged on daily wages and casual basis by the Branch as per need based and engaged through different contractors. He has also stated that the concerned workman had not discharged their duties continuously for 240 days. He has further deposed that M/s. Santosh Electrical was given contract of electrical maintenance and cycle shed was entrusted to contractor Jugeshwar Prasad. In the cross-examination he has deposed that he had not seen any record to show that the concerned workman had worked for less than 240 days in one calendar year.

32. The documents exhibited on behalf of the management shows that the Exhibit M-1 series is letter issued by Assistant General Manager to DGM Patna Zone informing that Jugeshwar Prasad, Labour Contractor through his own men were engaged to guard parking of two wheelers of Bank staff, letter of Jugeshwar Prasad addressed to Branch Manager, SBI requesting him to Award a contract for three years for guarding the parking on payment of Rs. 3300/- per month, order of Chief Manager for approval of contract for a period of one year from October 2002 to September 2003 and order dated 18/09/2001 regarding extension of one year of the contract, order dated 18/11/1998 regarding allotment of labour contract to Jugeshwar Prasad to look after Bank cycle stand, letter dated 15/10/1998 written by Jugeshwar Prasad regarding enhancement of salary to the employees. Exhibit M-2 series is an agreement in respect of contract for electrical maintenance in the State Bank of India. Exhibit M-2/2 is a note of Assistant General Manager mentioning therein that this Branch had engaged the service of M/s. Santosh Electricals for maintenance of electrical fitting at the Branch Premises as well as residences of officials of the Branch at a fixed sum of Rs. 5500/- per month for a period of three years w.e.f. 01/08/2000 which had come to end and the contract was extended for further period of three years w.e.f. 01/08/2004. Exhibit M-2/3 is a renewal of contract for electrical maintenance by M/s. Santosh Electricals and contract for electrical maintenance signed by Assistant General Manager on behalf of SBI and S. Singh on behalf of Santosh Electricals and note of Assistant General Manager dated 17/10/1998 mentioning the quotations submitted by Santosh Electricals, Satyendra Singh and Sambhu Electricals. Exhibit M-3 is the additional salary paid to the subordinate cadre employee from 20/04/2001 to 10/12/2001.

33. It will be proper to mention here that the management of State Bank of India has stated that Satyendra Singh of M/s. Santosh Electrical was given a contract for electrical maintenance and he had never worked as an employee of the Bank. Further the management has also stated that the maintenance of security for cycle shed of Bank staff was given on contract and no employee had been appointed by the Bank for that purpose.

34. At this stage it is important to mention here that the Exhibit M-1 series are documents relating to grant of contract to Jugeshwar Prasad for watching off and guarding all vehicle of cycle stand near Bank but it has no where been mentioned that Vinay Kumar Sinha and Ajay Prasad Srivastava were engaged by the contractor for that purpose. Further the Exhibit M-2 series show that a contract was given to Santosh Electrical for maintenance of contract of electrical fitting in the premises of State Bank of India but it has no where been mentioned that Satyendra Singh was given the said contract for maintaining electrical fitting in the Bank Premises.

35. Now, after analyzing oral and documentary evidences of both the parties as available on the record it is quite apparent that there is a consistent evidences that the concerned workmen namely 1) Ashok Kumar 2) Pramanand Singh 3) Ajay Prasad Srivastava 4) Binay Kumar Sinha 5) Rabindra Kumar 6) Nand Kishore Ram 7) Suchita Ram 8) Jai Prakash Singh 9) Sunil Kumar 10) Arjun Kumar Singh 11) Prabhat Kumar and 12) Vijay Kumar Singh were employed by the State Bank of India, Patna Secretariat Branch as Messenger for discharging different work in Bank and workman Satyendra Singh was employed as Electrician on casual basis/daily wages for electrical maintenance. Moreover Exhibit W-2 series, Exhibit W-4 series, Exhibit W-5 series, Exhibit W-6 series, Exhibit W-7 series, Exhibit W-10 series, Exhibit W-11 series, Exhibit W-12 series, Exhibit W-13 series, Exhibit W-17 series and Exhibit W-20 series show that all the concerned workmen have been paid their remuneration for their work in the Bank at different period and after computing the period of payment it appears that they had worked for more than 240 days in one calendar year and they had been removed from their services on 02/06/2007. Further, it is quite apparent that the management of State Bank of India in their written statement has admitted that all the concerned workman were working on the basis of as and when required.

36. It is important to mention here that the workman has been defined u/s 2(s) of Industrial Dispute Act. The Section 2(s) of I.D. Act reads as follows:-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a person, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature

37. At this stage it is relevant to mention here that the Hon’ble Supreme Court in a case as reported in 2011 LAB. I. C. 2799 (S.C) has been pleased to observe as follows:-

“14. It is apposite to observe that 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 a 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.

15. Whenever an employer challenges the maintainability ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of ‘workman’.

38. It is required to mention here that all thirteen concerned workmen namely 1) Ashok Kumar 2) Pramanand Singh 3) Ajay Prasad Srivastava 4) Binay Kumar Sinha 5) Rabindra Kumar 6) Nand Kishore Ram 7) Suchita Ram 8) Jai Prakash Singh 9) Sunil Kumar 10) Arjun Kumar Singh 11) Prabhat Kumar and 12) Vijay Kumar Singh had worked in the State Bank of India, Secretariat Branch, Patna as daily wager as messenger and Satyendra Singh had worked as electrician, so they were employed in the Bank on hire and consequently

they were a workman and there was a relationship between them and the management as employer and employee, so there is Industrial Dispute.

39. It is also relevant to mention here that the word retrenchment has been defined u/S 2(oo) of the I.D. Act, definition of continuous service has been mentioned u/s 25-B of I.D. Act and the condition precedent to retrenchment have been mentioned u/S 25-F of I.D. Act.

Section 2(oo) of the I.D. Act reads as follows:-

Section 2(oo) -“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) Termination of the service of the workman as a result of the non-renewal of contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) Termination of the service of a workman on the ground of continued ill-health.

The Section 25-F of the Industrial Dispute Act reads as follows:-

25-F Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) *The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for Every completed year of continuous service) or any part thereof in excess of six months; and*
- (c) *Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)*

25-B. Definition of continuous service – For the purpose of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b).....

48. Now in this case there is categorical evidence that all the thirteen concerned workmen had worked in Patna Secretariat Branch of S.B.I for more than 240 days in each and every Calendar Year, so the concerned workmen were in continuous service in the Bank as per definition mentioned u/s 25-B of I.D' Act. Moreover there is also evidence that the concerned workmen were removed from his service w.e.f 02/06/2007. Further there is no evidence before the Tribunal that the concerned workman had been given one month notice in writing indicating the reasons for their retrenchment/ removal or had been paid compensation equivalent to 15 days of average pay as per provision of 25-F of the I.D. Act.

40. Hence, in view of above the discussion the Tribunal finds and holds that all the thirteen concerned workmen namely 1) Ashok Kumar 2) Pramanand Singh 3) Ajay Prasad Srivastava 4) Binay Kumar Sinha 5)

Rabindra Kumar 6) Nand Kishore Ram 7) Suchita Ram 8) Jai Prakash Singh 9) Sunil Kumar 10) Arjun Kumar Singh 11) Prabhat Kumar and 12) Vijay Kumar Singh had been working in S.B.I, Secretariat Branch, Patna as messenger and Satyendra Singh had been working as electrician on daily wages and they had been removed from service w.e.f. 02/06/2007. Further the action of the management in terminating the services of all the concerned workmen w.e.f. 02/06/2007 is not legal and justified. Hence the concerned workmen are entitled for relief.

41. At this stage it is relevant to mention here that the Hon'ble Supreme Court in catena of decision has been pleased to observe that the completion of 240 days work doesn't under the law import the right to regularisation and it merely imposed certain obligation on the employer at the time of termination of service.

The Hon'ble Supreme Court in a case of **Hindustan Aeronautics Ltd Vs. Dan Bahadur Singh, as reported in (2007) 6 SCC 207**, especially in Paragraph No. 18 as under:-

"18. The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim regularisation in service. In Madhyamik Shiksha Parishad vs. Anil Kumar Mishra it was held that the completion of 240 days' work does not confer the right to regularisation under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the services. In M.P. Housing Board vs. Manoj Shrivastava (para 17) after referring to several earlier decisions it has been reiterated that it is well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service. This view has been reiterated in Gangadhar Pillai vs. Siemens Ltd. The same question has been examined in considerable detail with reference to an employee working in a government company in Indian Drugs & Pharmaceuticals Ltd. vs. Workmen and paras 34 and 35 of the report are being reproduced below: (SCC p.426)

"34. Thus, it is well settled that there is no right vested in any daily wager to seek regularisation. Regularisation can only be done in accordance with the rules and not dehors the rules. In the case of E. Ramakrishnan v. State of Kerala this Court held that there can be no regularisation dehors the rules. The same view was taken in Kishore (Dr.) v. State of Maharashtra and Union of India v. Bishamber Dutt. The direction issued by the services Tribunal for regularising the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In Surinder Singh Jamwal (Dr.) v. State of J&K it was held that ad hoc appointment does not give any right for regularization as regularization is governed by the statutory rules."

The Hon'ble Jharkhand High Court has been pleased to observe in **L.P.A No. 268/2012** which is as under:-

"(xiv) Be that as it may, even assuming without admitting that this appellant has worked more than 240 days in couple of years, then also, his services cannot be regularized. 240 days' working is not a magic bond which converts illegal appointment into the legal appointment. In fact, 240 days working has nothing to do with the regularization at all. 240 days working has got reference under Section 25-B of the Industrial Disputes Act, 1947 for calculation of continuous years of service and nothing beyond that. Unnecessarily several times the Labour Court or the Industrial Courts are committing an error that if any worker has completed 240 days, their services should be regularized. In fact, there is no casual connection at all between the working of 240 days and right of regularization. Illegality in the appointment cannot be diluted by the working of 240 days. Illegality in the appointment continues, even if, the worker has worked for 240 days."

The Hon'ble Jharkhand High Court has been further pleased to hold as follows:-

"Whenever any employment is given unauthorizedly, in the respondent-UCO Bank, Hirapur, Dhanbad, such type of employment cannot be converted into a regular employment unless there are rules for regularization or scheme for regularization. In the facts of the present case, there are no rules of regularization nor there is any scheme of regularization floated by the UCO Bank. In absence of such type of law, the charity shown by the Court will be cruelty to others. If such type regularization is allowed by the Courts, it will provide encouragement to those who are adorning high-ranking administrative position to give illegal appointment and later on, to get them regularized by the orders of the Courts. A thing which cannot be done directly, can never be done indirectly. If no employment can be given without there being any advertisement and without there being any recruitment process, the Court cannot be a party to illegal regularization of such employee."

42. In view of such fact and in view of decision of Hon'ble Supreme Court and Hon'ble Jharkhand High Court it is settled that all the workmen are not entitled for regularization of their job for working 240 days in a calendar year in, SBI, Patna Secretariat Branch.

43. It is relevant to mention here that the Hon'ble Supreme Court in a case of **BSNL Vs. Bhurumal as reported in (2014) 7 SCC 177**, the Hon'ble Supreme Court has been pleased to observe as under:-

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 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. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization 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.

44. The Hon'ble Supreme Court in a case of **District Development Officer Vs. Satish Kantilal Amrelia** as reported in (2018) 12 SCC 29 B has been pleased to hold as follows:-

“16) In view of forgoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of re-instatement and other consequential benefits by taking recourse to the powers under Section 11-A of the Act and the law laid down by this Court in Bharat Sanchar Nigam Limited case (supra)”.

45. The Hon'ble Supreme Court in another case Deputy Executive Engineer Vs Kuberbhai Kanjhibhai as reported in 2019 (160) FLR 651 has reiterated the same principle.

46. Now, in this case the all thirteen concerned workmen 1) Ashok Kumar 2) Pramanand Singh 3) Ajay Prasad Srivastava 4) Binay Kumar Sinha 5) Rabindra Kumar 6) Nand Kishore Ram 7) Suchita Ram 8) Jai Prakash Singh 9) Sunil Kumar 10) Arjun Kumar Singh 11) Prabhat Kumar and 12) Vijay Kumar Singh had been working as messenger and Satyendra Singh had been working as electrician on daily wages in the State Bank of India, Patna Secretariat Branch since their appointment on different dates and they were removed from the service w.e.f. 02/06/2007 without being given any notice of retrenchment.

47. In view of the decision of Hon'ble Supreme Court as discussed above it would be proper, just and reasonable to grant lump-sum monetary compensation of three lakhs to all the thirteen concerned workmen.

48. After considering all the facts and circumstances the Tribunal renders the following award:-

“The action of Management of State Bank of India in terminating the services of S/Sh. (1) Ashok Kumar, (2) Pramanand Singh, (3) Satyendra Singh, (4) Ajay Prasad Srivastava, (5) Binay Kumar Sinha, (6) Rabindra Kumar, (7) Nand Kishor Ram, (8) Suchita Ram, (9) Jai Prakash Singh, (11) Arjun Kumar Singh, (12) Prabhat Kumar and (13) Vijay Kumar Singh, w.e.f. 02/06/2007, is not legal and justified.

49. Hence, the concerned workmen are entitled for relief which is as under:-

The State Bank of India, Patna Secretariat Branch is directed to pay a sum of Rs. Three Lakhs to each of all the thirteen concerned workmen namely 1) Ashok Kumar 2) Pramanand Singh 3) Satyendra Singh 4) Ajay Prasad Srivastava 5) Binay Kumar Sinha 6) Rabindra Kumar 7) Nand Kishore Ram 8) Suchita Ram 9) Jai Prakash Singh 10) Sunil Kumar 11) Arjun Kumar Singh 12) Prabhat Kumar and 13) Vijay Kumar Singh as lump-sum compensation after proper verification within one month after publication of award in Official Gazette.

This is the Award of the Tribunal.

D. K. SINGH, Presiding Officer

नई दिल्ली, 12 फरवरी, 2021

का.आ.137.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इंडियन फार्मर्स फ़र्टिलाइज़र कोऑपरेटिव लिमिटेड के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रचालन के अध्वधीन था ऐसी विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-
 - (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या
 - (ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
 - (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-
 - (क) प्रधान या अत्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है; या
 - (ख) ऐसे प्रधान या अत्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और

अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या अत्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना।

6. विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वतः रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा।

[सं. एस-38014/08/2020-एस एस-1]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 137.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Indian Farmers Fertiliser Cooperative Limited** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees;
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;
- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of—
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —

- (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
- (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or
- (e) exercise such other powers as may be specified.

(6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/08/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 12 फरवरी, 2021

का.आ. 138.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एचआईएल (भारत) लिमिटेड के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रचालन के अध्यक्षीन था ऐसी विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-
 - (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या

- (ii) यह अभिनिश्चयन के लिए कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
- (iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
- (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-
 - (क) प्रधान या अत्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है; या
 - (ख) ऐसे प्रधान या अत्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
 - (ग) प्रधान या अत्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
 - (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
 - (ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना।

6. विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वतः रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा।

[सं. एस-38014/12/2020-एस एस-I]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 138.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **HIL (India) Limited** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees;
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;

- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, accountbook or other document maintained in such factory, establishment, office or other premises; or
 - (e) exercise such other powers as may be specified.
- (6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/12/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 12 फरवरी, 2021

का.आ. 139.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राष्ट्रीय केमिकल्स एंड फर्टीलाइज़र्स लिमिटेड (थल यूनिट) के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए, प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;

- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रचालन के अधीन था ऐसी विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-
 - (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या
 - (ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
 - (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-
 - (क) प्रधान या अत्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है ; या
 - (ख) ऐसे प्रधान या अत्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
 - (ग) प्रधान या अत्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
 - (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
 - (ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वतः रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा।

[सं. एस-38014/05/2020-एस एस-I]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 139.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Rashtriya Chemicals and Fertilizers Limited (Thal unit)** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees';
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;
- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or
 - (e) exercise such other powers as may be specified.

(6) In case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/05/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 12 फरवरी, 2021

का.आ. 140.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, ओएनजीसी मैंगलोर पेट्रोकेमिकल्स लिमिटेड के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए, प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रचालन के अध्वधीन था ऐसी विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-
 - (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या
 - (ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
 - (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-

- (क) प्रधान या अत्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है; या
- (ख) ऐसे प्रधान या अत्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
- (ग) प्रधान या अत्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना।

6. विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वतः रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा।

[सं. एस-38014/10/2020-एस एस-1]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 140.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **ONGC Mangalore Petrochemicals Limited** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees';
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;
- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

- (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
- (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or
 - (e) exercise such other powers as may be specified.
- (6) In case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/10/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 12 फरवरी, 2021

का.आ. 141.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, **भिलाई स्टील प्लांट ऑफ़ सेल** के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए, प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रचालन के अध्यक्षीन था ऐसी

विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-

- (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या
- (ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
- (iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
- (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-
 - (क) प्रधान या अत्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है; या
 - (ख) ऐसे प्रधान या अत्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
 - (ग) प्रधान या अत्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
 - (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
 - (ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वतः रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा ।

[सं. एस-38014/04/2020-एस एस-1]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 141.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Bhilai Steel Plant of SAIL** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees';
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;
- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or
 - (e) exercise such other powers as may be specified.
- (6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/04/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 12 फरवरी, 2021

का.आ. 142.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राउरकेला स्टील प्लांट ऑफ़ सेल के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिये, प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रचालन के अधीन था ऐसी विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-
 - (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या
 - (ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
 - (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-
 - (क) प्रधान या अत्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है; या
 - (ख) ऐसे प्रधान या अत्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से

संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

- (ग) प्रधान या अत्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना।

6. विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वतः रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा।

[सं. एस-38014/11/2020-एस एस-1]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 142.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Rourkela Steel Plant of SAIL** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees';
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;
- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —

- (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or
 - (e) exercise such other powers as may be specified.
- (6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/11/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 12 फरवरी, 2021

का.आ. 143.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, कृषक भारती कोआपरेटिव लिमिटेड के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट राजपत्र में इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए, प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसे फायदे प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट प्रदान करने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने और स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रचालन के अध्वधीन था ऐसी विवरणियां, ऐसे प्ररूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन निगम द्वारा नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या इस प्रयोजन के लिए निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी-

- (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या
- (ii) यह अभिनिश्चयन के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
- (iii) यह अभिनिश्चयन के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
- (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने और स्थापना के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-
 - (क) प्रधान या अत्यवहित नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है; या
 - (ख) ऐसे प्रधान या अत्यवहित नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
 - (ग) प्रधान या अत्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
 - (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
 - (ङ) यथास्थिति अन्य शक्तियों का प्रयोग करना।

6. विनिवेश या निगमीकरण के मामले में, प्रदान की गई छूट स्वतः रद्द हो जाएगी और तब नई इकाई को छूट के लिए समुचित सरकार को आवेदन करना होगा।

[सं. एस-38014/07/2020-एस एस-I]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 143.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Krishak Bharti Cooperative Limited** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees';

- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;
- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or
 - (e) exercise such other powers as may be specified.
- (6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/07/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 12 फरवरी, 2021

का.आ. 144.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पवन हंस लिमिटेड के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिये, प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तन के अध्वधीन था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस प्रयोजन के लिए इस निमित्त प्राधिकृत कोई अन्य पदधारी-
 - (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या
 - (ii) यह अभिनिश्चयन करने के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चयन करने के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
 - (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-
 - (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है ; या
 - (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

- (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथास्थिति ऐसी अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश या निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट के लिए समुचित सरकार को आवेदन करना होगा ।

[सं. एस-38014/02/2020-एस एस-1]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 144.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Pawan Hans Limited** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees;
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;
- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to —
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and

require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or
- (e) exercise such other powers as may be specified.

(6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/02/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 12 फरवरी, 2021

का.आ.145.—केन्द्रीय कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिंदुस्तान पेट्रोलियम कॉरपोरेशन लिमिटेड के कारखानों और स्थापनाओं के नियमित कर्मचारियों को उक्त अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए, प्रभावी रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) कारखाना और स्थापना छूट प्राप्त कर्मचारियों के नाम और पदनाम विनिर्दिष्ट करते हुए, कर्मचारियों का एक रजिस्टर रखेगी;
- (2) कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तन के अधीन था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों से युक्त होगी जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस प्रयोजन के लिए इस निमित्त प्राधिकृत कोई अन्य पदधारी-
 - (i) उक्त अधिनियम की धारा 44 की उप धारा (1) के अधीन, उक्त अवधि के लिए प्रस्तुत किसी विवरण में अंतर्विष्ट विशिष्टियों को सत्यापित करने; या

- (ii) यह अभिनिश्चयन करने के लिए कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
- (iii) यह अभिनिश्चयन करने के लिए कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार है या नहीं; या
- (iv) यह अभिनिश्चयन के लिए कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा-
 - (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे इस अधिनियम के प्रयोजन के लिए आवश्यक समझता है; या
 - (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह कार्मिक के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
 - (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
 - (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
 - (ङ) यथास्थिति ऐसी अन्य शक्तियों का प्रयोग करना।

6. विनिवेश या निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट के लिए समुचित सरकार को आवेदन करना होगा।

[सं. एस-38014/09/2020-एस एस-I]

मदन चौरसिया, अवर सचिव

New Delhi, the 12th February, 2021

S.O. 145.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories and establishments of **Hindustan Petroleum Corporation Limited** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of publication of this notification in the Official Gazette.

2. The exemption is subject to the following conditions, namely:-

- (1) the factories and establishments shall maintain a register of the employees specifying the names and designations of the exempted employees;
- (2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) the contribution for the exempted period, if already paid, shall not be refundable;

- (4) the employer of the said factory and establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) a Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of —
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory and establishment to be empowered to—
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or
 - (e) exercise such other powers as may be specified.
- (6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/09/2020-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 16 फरवरी, 2021

का.आ. 146.—औद्योगिक विवाद अधिनियम, 1947 (14 का 1947) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में नेशनल इंडस्ट्रियल ट्रिब्यूनल, मुंबई के पंचाट (संदर्भ संख्या 01/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2021 को प्राप्त हुआ था।

[सं. एल-22012/359/2003-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 16th February, 2021

S.O. 146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2005) of the National Industrial Tribunal, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 15.02.2021.

[No. L-22012/359/2003-IR(CM-II)]

RAJENDER SINGH,

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL MUMBAI

Present : JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

REFERENCE NO. NTB-1 OF 2005

Parties: Food Corporation of India

AND

Their workmen

Appearances:

For the first party No. 1 Management : Mr. Abhay Kumar, Adv.

For the FCI Workers Union : Mr. Anil Tiwari, Adv.

For Handling Workers' Union : Ms. Kunda Samant, Adv.

Mumbai, dated the 31st day of December, 2020

AWARD

1. In compliance of the judgement dated 14.9.2005 of Hon'ble High Court of Delhi in Writ Petition No. 3792/2004 the Central Government in exercise of powers conferred by Sub-Section (1A) of Section 10 of the Industrial Disputes Act (hereinafter referred to as the I.D. Act) has referred the following dispute to this Tribunal.

"Whether the action of the Food Corporation of India in reducing the rates of overtime wages of its food handling workers from 1.25 times to 1.1 times of the normal rates of wages for overtime work between 6 ½ and 8 hours and further from as per the Shops & Establishment Act of the respective States to 1.1 times for work beyond 8 hours, both by Circular Notice dated 1.7.2000 and circulars No. 1 & 2 both dated 19.1.2004 is legal and justified? If not, to what relief the workmen are entitled?"

2. According to the Statement of Claim filed on behalf of the Food Corporation of India Workers Union (hereinafter referred to as the Union) and Food Corporation of India (Handling) Workers' Union a Memorandum of Understanding was arrived at between the Food Corporation of India (hereinafter referred to as the F.C.I.) and the Union on 13.6.1994. According to the said Memorandum of understanding it was decided that:

- (1) Working hours of departmental labourers, piece rate system ('B' category workers) direct payment system workers, mate system workers, Management Committee system workers would be at par with the working hours of depot staff working in the respective depots.
- (2) The overtime allowance for work beyond normal duty hours upto the statutory hours of work (i.e. 6 ½ to 8 hours) was fixed at 1.25 times that of normal duty hours.
- (3) Beyond statutory hours (8 hours) the rate of overtime allowance would be fixed on the basis of respective Shops and Establishments Act of the relevant States.

The F.C.I. then issued a circular dated 16.6.1994 fixing 6 ½ hours as working hours with 30 minutes lunch break and fixed the overtime allowance payable to the departmental labourers @ 1.25 times of the hourly rate for the extra duty hours put in beyond the normal duty hours upto statutory hours of work (i.e. from 6 ½ to 8 hours) and rate for overtime allowance beyond statutory hours of work as prescribed in the respective Shops and Establishments Acts of the respective States. The circular was made applicable to the labourers engaged in the depots located in North, East and North-East Zones as also in the depots of M.P. and in the depot at Akola in Maharashtra in West Zone. However, in W.B., Bihar, Orissa and Assam regions the overtime for such period was to be regulated as per the existing practice. It is the case of both the Unions that the Memorandum of Understanding is like Settlement as envisaged under the provisions of the I.D. Act and it is binding on the parties

till a notice is issued by either party expressing its intention to terminate it or unless the terms of the Memorandum of Understanding are replaced by any other award or Settlement. However, the F.C.I. issued a notice dated 22.7.2002 under Section 9A of the I.D. Act altering overtime allowance to 1.1 times of the normal hourly rate of wages in the States where the F.C.I. was granted exemption from the provisions of the Shops and Establishments Acts or where the provisions of the Shops and Establishments Act of the State was not made applicable to the F.C.I. The Union opposed the notice by raising industrial dispute and the notice dt. 1.7.2002 was stayed by circular dated 29.8.2002 in view of the conciliation proceedings between the parties. The conciliation proceedings failed and failure report was submitted on 22.10.2003. However, the Central Government failed to refer the dispute for adjudication and taking advantage of this situation the F.C.I. issued two circulars dated 19.1.2004 giving effect to the notice dated 1.7.2002. The Union then filed writ petition (civil) No. 3792 of 2004 in the Delhi High Court. By judgment dated 14.9.2005 passed by the Hon'ble Delhi High Court in the aforesaid Writ Petition the Central Government was directed to refer the dispute to the National Industrial Tribunal. Hence this Reference. The two unions have stated that the reduction in overtime wages is illegal and unjustified being in violation of the terms of the Memorandum of Understanding dt.13.6.1994 which has neither been terminated nor replaced by any other Award or Settlement.

3. According to the statement filed by the F.C.I. the reduction of rates of overtime wages is perfectly legal since the Memorandum of Understanding signed on 13.6.1994 is not a Settlement. According to the statement majority of establishments of the F.C.I. are exempted from the provisions of the Shops and Establishments Acts of respective States and, therefore, they are not under obligation to pay overtime wages in accordance with the provisions of the said Acts and wherever the Shops and Establishments Act is applicable the F.C.I. is paying overtime wages as prescribed by the said Act. The F.C.I. has, therefore, prayed that the reference be answered in favour of the F.C.I.

4. The two Unions have filed rejoinders stating that the F.C.I. signed the Memorandum of Understanding dated 13.6.1994 after majority of their establishments had received exemption from the provisions of the Shops and Establishments Act. The Memorandum of Understanding dt.13.6.1994 envisages the rate of overtime wages under the Shops and Establishments Acts as model rates and the same have no connection with the applicability of the said Acts to the establishment of the F.C.I. It has also been stated that after the Memorandum of Understanding dt.13.6.1994 the F.C.I. has issued circular dated 16.6.1994 and thereby the F.C.I. has given the Memorandum of Understanding dt.13.6.1994 the status of Settlement.

5. This Tribunal answered the reference in favour of the workmen vide its Award dt.07.09.2012 thereby quashed the Circular Notice dt.01.07.2002 and Circulars No. 1&2 both dated 19.1.2004 issued by the FCI.

6. Aggrieved FCI raised issue before Hon'ble Bombay High Court vide WP No. 10823 of 2013 against the aforesaid Award. The said Award was set aside by the Hon'ble Bombay High Court vide its Order dt.22.04.2014 and remanded the matter back to the Tribunal to consider the legal status of the Memorandum of Understanding dt.13.06.1994 between the FCI and FCI Workers' Union to pass a fresh Award.

7. Pursuant thereto, this Tribunal framed following seven issues vide its Order dt.21.04.2016 for adjudication.

- (1) Whether the document dated 13.06.94 followed by the Circular dated 16.06.1994 acquired status of Settlement as contemplated under the Industrial Disputes Act, 1947 and was binding between the parties?
- (2) Whether on the facts and in the circumstances of the case, Notice dated 01.07.2002 issued by Food Corporation of India under Section 9-A of the Industrial Disputes Act, 1947 and legal and valid?
- (3) Whether on the facts and in the circumstances of the case, Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and valid?
- (4) Whether the document dated 13.06.94 followed by Circular dated 16.06.94 could be superseded by Food Corporation of India by issuing Circulars Nos. 1 and 2 both dated 19.01.2004?
- (5) Whether action of Food Corporation of India in reducing the overtime wages of its food Handling workers from 1.25 times to 1.1 times of the normal rate of wages for overtime work between 6 1/2 and 8 hours, both by Circular Notice dt.01.07.2002 and Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and justified?
- (6) Whether action of Food Corporation of India in reducing the overtime wages of its food handling workers from those as per Shops & Establishment Act of the respective States to 1.1 times for work beyond 8 hours, both by Circular Notice dt.01.07.2002 and Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and justified?
- (7) To what relief, if any, the second party/Union is entitled?

8. Factual Matrix which transpires from record that the FCI vide Memorandum of Understanding dt.13.06.94 (“1994 MOU, for short”) with the Union, agreed to pay OTA to its workers,

- (a) (i) for overtime work between 6 ½ and 8 hours (i.e. intervening period) at the rate of 1.25 times of the normal duty hourly wages,
- (ii) for overtime work beyond statutory 8 hours as per rate fixed under respective Shops & Establishment Act of the States.
- (b) The 1994 MOU with respect to OTA was implemented by FCI within three days of its signing by its Circular dt.16.06.1994. Indisputably, at the time of signing of 1994 MOU, FCI was exempted under Shops & Establishment Act of various States. The applicability/non-applicability of the Shops & Establishment Act to FCI was not an issue because only rate is fixed there under and apparently were to be used as guideline for paying OTA for works after statutory hours. FCI has continuously paid OTA as agreed above, till the year 2004 for both the intervening period as well as for works beyond statutory hours.
- (c) On 01.07.2002, FCI issued a Notice u/s 9A of the ID Act to the workers/Union, seeking to vary the rate for overtime work between 6 ½ and 8 hours (i.e. intervening period) at the rate of 1.25 times of the normal duty hourly wages to 1.1, and for overtime work beyond statutory 8 hours as per rate fixed under respective Shops & Establishment Act of the States to 1.1.
- (d) The Union, immediately raised an industrial dispute in the aforesaid matter vide its Letter dt.15.07.2002. Ld. RLC (Central) took cognizance of the industrial dispute vide its Order/Letter dt.19.07.2002 and directed the parties to be present for conciliation proceedings on 06.08.2002. In the meantime, directed the parties not to violate Section 33 of the ID Act. Accordingly, FCI suspended its Notice dt.01.07.2002 u/s 9A of ID Act, and directed its officers/offices to pay OTA to the workers as per the 1994 MOU/Circular dt.16.06.1994.
- (e) The conciliation process failed. Ld. RLC (Central) recorded the failure order and filed the Failure of Conciliation (“FOC” for short) reports with the Central Government for further consideration and/or reference. Thereafter FCI issued the Circulars Nos. 1 and 2 both dated 19.01.2004 on the basis of its Notice dt.01.07.2002 and varied the rate for overtime work between 6 ½ and 8 hours (i.e. intervening period) from 1.25 times of the normal duty hourly wages to 1.1, and for overtime work beyond statutory 8 hours as per rate fixed under respective Shops & Establishment Act of the States to 1.1, to the disadvantage of the workers.

9. It is apparent that the 1994 MOU was never been terminated. Further, FCI has not issued any notice to the workers/Union for terminating the said 1994 MOU as required under Section 19(2) of the ID Act.

10. Each of the Union has filed by way of evidence of two witnesses namely; 1 Dulal Chandra Nath 2 Maheshwar Mahto who have been cross-examined by learned counsel for the management. Management has filed affidavit of one witness namely. Mr.Tej Singh who has been cross-examined by the learned counsel for the Union.

11. Heard Mr. Abhay Kumar, learned counsel for the first party management and Mr.Anil Tiwari, learned counsel for the F.C.I. workers Union and Ms.Kunda Samant, Adv for the FCI Handling Workers’ Union.

12. **SUBMISSIONS:**

- (1) Learned counsel for the FCI Workers Union submitted that the 1994 MOU is a Settlement between the party within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Dispute (Central) Rules, 1957 (1957 Rules for short) which is binding upon the party under Section 18(1) read with 19(1) and (6) of the Industrial Disputes Act. Unless the same is expressly terminated by a notice under section 19(2) of the Industrial Disputes Act.
- (2) It submitted that OTA rates were agreed between the parties vide 1994 MOU which was acted upon by the management vide circular dated 16.6.1994 and OTA was paid to the workers accordingly for decade till 2004. On the basis of which it was argued that the FCI’s notice dated 1.7.2002 pertaining to modification of rates of OTA without terminating the 1994 MOU and the FCI Circulars No. 1 and 2 both dated 19.1.2004 issued on the basis of FCI notice dated 1.7.2002 thereby altering the rates of OTA during pendency of conciliation proceedings are arbitrary, illegal and violative of section 2(p), 18(1), 19(1) and (6) read with section 12(1) and (5) and 33 (1) of the Industrial Disputes Act, 1947. Thus the notices and circulars are void ab initio and liable to be set aside.
3. Further submitted that the FCI Management has produced the 1994 MOU as a compromise before the Hon’ble Calcutta High Court in W.P No. 452 of 1992 and settled another industrial dispute

pertaining to “absorption of 323 retrenched workers of CWC Depot in West Bengal by the FCI management in FCI Depot”. On this basis argument was placed that 1994 MOU taken in entirety, in the present circumstances has acquired a legal status of settlement under the Industrial Disputes Act.

4. Lastly argued that OTA benefits derived by the workers of the FCI have crystallised as “benefits derived under a Settlement under the Industrial Disputes Act.

SUBMISSION OF MANAGEMENT:

5. Learned counsel representing the FCI management has submitted that the Memorandum of Understanding dated 13.6.1994 cannot be termed as Settlement as it does not satisfy the requirements of Settlement as laid down under Section 2(p) of the Industrial Disputes Act 1947 read with Rule 58 and 75 of the Industrial Disputes (Central) Rules 1957 framed under the Act. Further, argued that for any written agreement to be treated as a Settlement, a copy thereof has to be sent by the parties to Officers authorised by the Appropriate Government and the Conciliation Officer. Further argued that mandatory requirement has not been fulfilled in this case. Hence the MOU dated 13.6.1994 cannot be termed as Settlement. It further argued that there is no mention of Memorandum of Settlement (MOU) in the I.D. Act 1947 or Rules framed there under. The entire case of the Union nests on the concept of deemed Settlement, which has no recognition under the law. Further argued that the concept of MOU mainly applies in the commercial contract where MOU means an agreement to enter into agreement with regard to the circulars dated 16.6.1994 issued by the management, he argued that it does not refer to the memorandum of understanding dated 13.06.1994.
6. Learned counsel for the FCI management next argued that the nature of the matter covered under the MOU dated 13.6.1994 (relating to OTA) that it was not feasible to execute it. Further submitted that the Memorandum of Understanding was signed between the parties due to pressure of strike, agitation etc. of the workers. Hence it is to be appreciated that the Memorandum of Understanding was signed under peculiar and specific circumstances. Therefore, it cannot be treated to have acquired the status of Settlement at a later stage. It was the next submission of the learned counsel of the management that if the OTA rates are to be paid as per the rates prescribed under Shops and Establishment Act, irrespective of exemption, then the very purpose of obtaining exemption gets defeated. It was also argued that for application of section 2(p), section 18(1) and section (19(1) and 19(6) of the Act, the basic premise is the very existence of settlement which is completely non-existent in the present case. Lastly, argued that in view of the failure report dated 22.10.2003, and its report dated 11.11.2003, there were no pending conciliation, therefore, there was no violation of any provision of the Act, so far the two circulars dated 19.1.2004 is concerned. In Last learned counsel submitted that Unions are not justified in raising such irrational demands purely on hyper technical grounds as the same have huge financial implications on the management.

13. In the light of the above submissions raised by both the parties, before this Tribunal, the relevant provisions of the Industrial Disputes Act 1947 as above stated are reproduced as below:

Section 2(p). “settlement” means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;]

Section 18(1). A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Section 19(1). A settlement shall come into operation on such date as agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

Section 19(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months [from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

Section 19(6). Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the party or parties intimating its intention to terminate the award.

Section 12(1). Duties of conciliation officers.—(1)Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

Section 12(5). If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board [Labour Court, Tribunal or National Tribunal] it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor.

Section 33(1). Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) In regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or
- (b) For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

Save with the express permission in writing of the authority before which the proceeding is pending.

INDUSTRIAL DISPUTES (CENTRAL) RULES, 1957.

Rule 58(4): Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned.

Rule 75 Register of settlements.—The Conciliation Officer shall file all settlements effected under this Act in respect of disputes in the area within his jurisdiction in a register maintained for the purpose as in Form O.

Rule 79 Penalties.—Any breach of these rules shall be punishable with fine not exceeding fifty rupees.

14. Hon'ble Bombay High Court vide its judgment dated 22.4.2014, while setting aside the Award passed by this Tribunal, Mumbai dated 07.9.2012, remanded back with a direction to consider the legal status of the Memorandum of Understanding (MOU).

15. In this regard I have considered the oral and written submissions of both parties and the material available on record and following judicial authorities on the subject which are stated below.

Kollipara Sriramulu vs. T.Aswathanarayana & Ors ,1968 AIR 1028 and Jai Beverages Pvt Ltd. vs. State of Jammu & Kashmir and others, 2006 (4) SCJ, the Hon'ble Apex Court has held that the fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract. In another case, Hon'ble Supreme Court also held that if the conditions of the MOU are otherwise acted upon, the parties to the MOU will get the benefits arising out of the MOU. In the present context, FCI Management's sole witness in the present proceedings Mr. Tej Singh in his cross-examination dated 03.11.2011 had specifically and clearly admitted that " This is correct to say that MOU dt. 13.6.1994 continues to be operative till today." Further, it is important to note that 1994 MOU pertaining to OTA was immediately implemented by FCI vide its circular dated 16.6.1994 and followed till 2004 meaning thereby both the parties have acted upon with the 1994 MOU with all its intent and purpose.

In Jyoti Brother vs. Shree Durga Mining Co. AIR 1956, Calcutta page 280, on the subject validity and enforceability of MOU, held that the Court will rely upon the degree of importance of such understanding to the parties and to the fact that whether any of them has acted in reliance on such understanding.

In Nanak Builders & Investors Pvt. Ltd vs. Vinod Kumar Alag AIR 1991 Del 315, held that the nature of the document is not decided on the heading but on the content that is written. Mere heading or title of a document cannot deprive the document of its real nature.

16. In the light of the above cited judgments, it can be concluded that the enforceability and binding nature of a MOU depends upon the content, nature of agreement, language and intention of the parties to it. In cases wherein the MOU is in the nature of a contract and fulfils its essentials, it is held to be enforceable. The major factor to decide whether a MOU would be binding is the intention of the parties while executing the MOU and their conduct post execution. Further in Brikram Kishore Parida vs. Penudhar Jena ,AIR 1976 Orissa (4) held that the test of an intention to create legal relation is an objective one. If a reasonable man would consider that the parties intended to enter into a contract, then he will be bound to make good on his promise. Use of the word "shall" will give a binding effect to the MOU and the use of the word "should" a non-binding effect. Another

way in which intention may be displaced is to include a clause in the agreement itself saying that this agreement did not intended to be a contract.

17. Now the next question for consideration is whether Memorandum of Understanding is like a deemed Settlement or not?

18. Following are the reasons for answering the issues framed by my learned predecessor on 21.4.2016. and my finding on giving a definite conclusion.

- (1) Memorandum of Understanding (MOU) is a bilateral document which has been signed by the FCI and the Union on 13.6.1994.
- (2) In pursuant of MOU and with a view to give effect to the provisions contained in the said MOU a circular has been issued by the FCI on 16.6.1994 (within 3 days) fixing 6 1/2 hours as a working hour with 30 minutes lunch break and fixing overtime allowance (OTA) payable to the Departmental Labourer @1.25 times of the hourly rate for the extra duty hour put in beyond the normal duty hour up to statutory hour of work i.e. from 6 ½ to 8 hours for intervening period and the rate for the overtime beyond statutory hour of work as prescribed in the respective Shops and Establishments Act.
- (3) 1994 MOU relating to OTA was immediately implemented (within 3 days) by the FCI vide its circular dated 16.6.1994. It was followed till 2004 meaning thereby both the parties have acted upon with the 1994 MOU.
- (4) 1994 MOU has never been terminated by the FCI. No written Notice of the intention to terminate the said 1994 MOU has been given by the FCI.
- (5) Mr. Tej Singh the sole witness in the present proceedings examined by the FCI has stated that MOU dt.13.6.1994 continues to be operative till today.
- (6) A bare perusal of the 1994 MOU with its format and content shows that it is signed by authorised Officers of the parties as provided under Rule 58 of 1957 Rules.
- (7) Both the parties have acted upon and benefitted from the MOU and the workers have earned the OTA @ agreed under 1994 MOU.
- (8) MOU was implemented vide circular dated 16.6.1994.
- (9) In addition to above, it is important to mention that MOU was produced as a compromise before the Hon'ble Calcutta High Court in Appeal No. 452 of 1992 and FCI and Union had got settled another industrial dispute pertaining to "absorption of 323 retrenched workers of CWC Depot in West Bengal by the FCI Management in FCI Depot". This itself is indicative of fact that there is a consistent practice of entering into MOU between FCI and Workers Union for improving service conditions of its members and culminated into enjoying benefits.
- (10) This shows that the MOU 1994 has acquired the legal status.
- (11) Both the parties have derived the benefit for a decade between 1994 to 2004 without any protest. It is noticeable that when the MOU was signed on 13.6.1994 and in pursuance of it, notification dt.16.6.1994 was issued by the FCI, majority of the establishment of the FCI had exemption from the provisions of Shops and Establishment Act. In spite of the exemption, the overtime rate prescribed in various Shops and Establishment Act was made applicable. Meaning thereby the applicability of the Shops & Establishment Act was not in question when the MOU was signed further had the applicability of the Shops & Establishment Act been the basis then the MOU dt.13.6.1994 would not have been signed and pursuance to that the circular dated 16.6.1994 would not have been issued.
- (12) Admittedly all Shops and Establishment Act provide that the wages for overtime work will be twice the ordinary rate of wages so it can be inferred that how it is justified for the FCI to say that the rate of overtime allowance will be 1.1 time of the normal hourly rate of wages. To reduce the OTA from twice the ordinary rate of wages to 1.1 times is definitely can be said to be unjust and improper. Hence, it is apparent that neither MOU 1994 was terminated nor replaced by any other Award or Settlement. In these fact situation, it is to be safely concluded that MOU is like a deemed settlement and binding on the parties and I also of the view that the Notice dt.1.7.2002 and the two circulars dt.19.1.2004 altering OTA to 1.1 times of the normal hourly rate of the wages could not sustain in the eyes of law, being unjust and improper.
- (13) With regard to the notice dated 1.7.2002 under Section 9-A of the Industrial Disputes Act and the two circulars dt.19.1.2004 which alters the overtime allowances to 1.1 times of the normal hourly

rate of wages , it is relevant to mention that either of the parties had not expressed its intention to terminate the MOU dt. 13.6.1994 and further the term of the said Memorandum of Understanding has not been replaced by any other Award or Settlement. In these fact situation, it is to be concluded that Memorandum of Understanding is like a Settlement and binding on the parties.

- (14) The 1994 MOU is signed by Authorised Officers of the parties as provided under Rule 58 of 1957 (Central) Rules. It is admitted that both the parties failed to jointly file a copy thereof to the concerned Authorities as provided under Rule 58(4) of 1957 Rules. Further, it is admitted that its copy has not been sent to the concerned authority as provided under Section 2(p) of the Industrial Disputes Act, 1947. In this regard, I would like to mention that the said defect does not go to the root of the matter and the legal status of 1994 MOU could not said to be changed. Further, following Judicial authorities have held that Rule 58 of 1957 Rules and part of Section 2(p) of the Industrial Dispute Act, 1947 which require copy of the MOU to be submitted to the prescribed/appropriate authority is directory in nature and not mandatory.

- (1) FCI Handling Workers' Union and others v/s UOI and others MANU/DE/2840/2013.
- (2) Rajendra Singh and others vs. Union of India (UOI) and others MANU/MH/0477/2088
- (3) Hindustan Zinc Workers' Union and others vs. Management of Agnigundala Lead Project , Hindustan Zinc Limited and others MANU/AP/0171/1987.

19. It is also pertinent to mention that procedural provisions are meant to facilitate justice. Technicality and Formalities should not come in the way of dispensation of justice between the parties. As I have already stated that compliance of Rule 58 and part of Section 2(p) of the Industrial Disputes Act, 1947 has already been held to be directory in nature. As stated earlier, failure of both the parties to send the copy of the MOU to the authority concerned does not go to the root of the matter and also it is directory in nature. Therefore, I am of the view that non-compliance of it, would not touch or change the status of the MOU. It may be mentioned here that OTA rates were agreed between the parties vide 1994 MOU and It was acted upon by the management vide circular dated 16.6.1994 and OTA was paid to the workers accordingly for a decade till 2004. This fact was specifically and in clear words admitted by the sole witness Shri Tej Singh examined by the management. Further, it is trite law that what cannot be done directly cannot be permitted to be done indirectly.

20. FCI has issued circular notice dated 1.7.2002 under Section 9-A of the Industrial Disputes Act, 1947. The workers' Union raised an industrial dispute in the aforesaid matter. Conciliation proceedings started. Directions were issued to the parties not to violate provisions of Section 33 of the Industrial Disputes Act. Accordingly, FCI has suspended its Notice under Section 9-A of the Industrial Disputes Act and directed to pay OTA to the workers as per 1994 MOU/Circular dated 16.6.1994. Thereafter, Conciliation proceedings failed. Failure report was sent to the Central Government but no Reference was made to the Tribunal. Thereafter FCI management issued two circulars both dated 19.1.2004 and modified the rate of OTA work between 61/2 to 8 hours i.e. intervening period from 1.25 times of the normal hourly wages to 1.1 and for overtime for beyond statutory 8 hours to 1.1 which is to the disadvantage of the workers and it is pertinent to note that at that point of time 1994 MOU was in existence and the OTA rate was implemented till 2004. It is noticeable that the matter was referred for adjudication on 10th of November 2005. It is also important to mention that the rate of OTA as agreed in 1994 MOU was acted upon till 2004 as admitted by the FCI sole witness. Under these facts and circumstances, how the FCI issued notice dated 1.7.2002 under Section 9-A of the Industrial Disputes Act and further two circulars dated 19.1.2004 changing the overtime allowances to 1.1 time of the normal hourly rate of wages without either party expressing its intention to terminate MOU dated 13.6.1994 or without replacing the terms of the said MOU of 1994 by way of any other Award or Settlement is not understandable because I am of the view that the said MOU is binding on both the parties and as per the provisions mentioned in the Industrial Disputes Act as stated above, MOU is like a deemed Settlement.

21. It is also pertinent to note that the Shops and Establishments Act provide wages for overtime work beyond statutory duty hours will be twice the ordinary rate of wages then how it is justified for the management to say that the rate of overtime allowances will be 1.1 times of the normal hourly rate of wages and further to reduce overtime allowance from twice the ordinary rate of wages to 1.1 times. To my point of view it could definitely be stated to be unfair, unjust and improper.

22. In view of the above discussion and for the reasons stated above, my conclusion is as follows:

- (1) MOU dated 13.06.1994 is binding on both the parties.
- (2) MOU is like. Deemed Settlement.
- (3) Notice dated 1.7.2002 and thereafter the two circulars dated 19.1.2004 which has altered the overtime allowance from 1.25 times to 1.1 times of the normal hourly rate of wages are to be quashed, accordingly hereby quashed and the rate of overtime allowance as prescribed in the

circular dated 16.6.1994 by the FCI in pursuance of the MOU dated 13.6.1994 are to be restored and is accordingly hereby restored.

23. In view of the aforesaid reasons and discussion, following are the answers to the Issues framed on 21.4.2016.

- (1) Whether the document dated 13.06.94 followed by the Circular dated 16.06.1994 acquired status of Settlement as contemplated under the Industrial Disputes Act, 1947 and was binding between the parties?

Ans. YES

- (2) Whether on the facts and in the circumstances of the case, Notice dated 01.07.2002 issued by Food Corporation of India under Section 9-A of the Industrial Disputes Act, 1947 and legal and valid?

Ans. NO

- (3) Whether on the facts and in the circumstances of the case, Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and valid?

Ans. NO.

- (4) Whether the document dated 13.06.94 followed by Circular dated 16.06.94 could be superseded by Food Corporation of India by issuing Circulars Nos. 1 and 2 both dated 19.01.2004?

Ans. NO

- (5) Whether action of Food Corporation of India in reducing the overtime wages of its food handling workers from 1.25 times to 1.1 times of the normal rate of wages for overtime work between 61/2 and 8 hours, both by Circular Notice dt.01.07.2002 and Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and justified?

Ans. NO.

- (6) Whether action of Food Corporation of India in reducing the overtime wages of its food handling workers from those as per Shops & Establishment Act of the respective States to 1.1 times for work beyond 8 hours, both by Circular Notice dt.01.07.2002 and Circulars Nos. 1 and 2 both dated 19.01.2004 was legal and justified?

Ans. NO.

- (7) To what relief, if any, the second party/Union is entitled?

Ans. Notice dated 1.7.2002 and two circulars dated 19.1.2004 are quashed and the rate of overtime allowance as prescribed in the Circular dated 16.6.1994 issued in pursuance to the MOU dated 13.6.1994 are restored and payment of arrears to be made accordingly.

Award is passed accordingly.

Justice RAVINDRANATH KAKKAR, Presiding Officer