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No. 50] NEW DELHI, DECEMBER 11—DECEMBER 17, 2022, SATURDAY/AGRAHAYANA 20—AGRAHAYANA 26, 1944

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)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 8 दिसम्बर, 2022

का. आ. 1306.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, सरकार भारत के राजदूतवास नूर- सुल्तान में विपिन राठी, सहायक अनुभाग अधिकारी को दिनांक 08 दिसम्बर 2022 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी. 4330/01/2022 (57)]

एस. आर. एच. फहमी, उप सचिव (कांसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 8th December, 2022

S.O. 1306.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Vipin Rathee, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Nur-Sultan to perform the consular services as Assistant Consular Officer with effect from 08 December 2022.

[F. No.T.4330/01/2022 (57)]

S.R.H FAHMI, Dy. Secy. (Consular)

नई दिल्ली, 8 दिसम्बर, 2022

का. आ. 1307.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, सरकार भारत के राजदूतवास टोक्यो में सुब्रता धर, सहायक अनुभाग अधिकारी को दिनांक 08 दिसम्बर 2022 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी.4330/01/2022 (58)]

एस. आर. एच. फहमी, उप सचिव (कांसुलर)

New Delhi, the 8th December, 2022

S.O. 1307.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Subrata Dhar, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Tokyo to perform the consular services as Assistant Consular Officer with effect from 08 December 2022.

[F. No. T.4330/01/2022 (58)]

S.R.H FAHMI, Dy. Secy. (Consular)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1308.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रम के निम्नलिखित कार्यालयों, जिनके 80 या अधिक प्रतिशत कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:-

- | | |
|--|---|
| 1. गेल (इंडिया) लिमिटेड,
बूस्टर स्टेशन, आईपीएस, राष्ट्रीय राजमार्ग
संख्या-27, पीओ- खडात, आबूरोड-
307026 | 2. गेल (इंडिया) लिमिटेड,
आईपीएस, मंशारामपुरा, निवारू रोड,
जयपुर |
| 3. गेल (इंडिया) लिमिटेड,
जीपीयू - गांधार, ग्राम - रोजाटंकारिया,
तालुका- आमोद, जिला भरूच - 392140 | 4. गेल (इंडिया) लिमिटेड,
इंटरमीडिएट पम्पिंग स्टेशन समाख्याली,
270 किमी. स्टोन, एनएच-27, ग्रा. एवं
पो.-लाकड़िया, तहसील -भचाउ,
जिला - कच्छ - 370145 |

5. गेल (इंडिया) लिमिटेड,
भुवनेश्वर कार्यालय, 610-612, उत्कल
सिग्रेचर, पहल, एनएच - 5, भुवनेश्वर -
751032

6. गेल (इंडिया) लिमिटेड,
वाराणसी कार्यालय, ऊर्जा भवन, गेल
सीएनजी मदर स्टेशन के पास, भगवानपुर,
हरहुआ, रिंग रोड, वाराणसी - 221005

[फा. सं. 11012/3/2021-रा.भा.]

शोभना श्रीवास्तव, उप निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 14th December, 2022

S.O. 1308.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the central Government hereby notifies the following offices of the Public Sector undertaking under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more percent of the staff have acquired working Knowledge of Hindi:-

1. GAIL (India) Limited,

Booster Station, IPS, NH-27,
PO- Khadat, Aburoad -307026

2. GAIL (India) Limited,

IPS, Mansarampura, Niwaru Road, Jaipur

3. GAIL (India) Limited,

GPU - Gandhar, village -
Rozatankaria, Taluka - Amod, District
- Bharuch - 392140 (Gujrat)

4. GAIL (India) Limited,

Intermediate Pumping Station Smaakhiali,
270 KM Stone, NH-27, Village &
Post - Lakadia, Tehsil - Bhachau, District -
Kutch - 370145

5. GAIL (India) Limited,

Bhubaneswar Office, 610-612, Utkal
Signature, Palala, NH - 5,
Bhubaneswar - 751032

6. GAIL (India) Limited,

Varanasi Office, Urja Bhawan, Near GAIL
CNG Mother Station, Bhagwanpur, Harhua,
Ring Road, Varanasi- 221005

[F. No. 11012/3/2021-OL]

SHOBHANA SRIVASTAVA, Dy. Director (OL)

कोयला मंत्रालय

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1309.— केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास), अधिनियम, 1957 (1957 का 20), (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) के अधीन भारत सरकार के कोयला मंत्रालय द्वारा जारी की गई अधिसूचना, संख्यांक का.आ. 2911(अ), तारीख 27 जून, 2022, जो भारत के राजपत्र, असाधारण, भाग II, खण्ड 3, उपखण्ड (ii), तारीख 27 जून, 2022 में प्रकाशित की गई थी, उस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 38.20 हेक्टेयर (लगभग) या 94.39 एकड़ (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि के भाग में कोयला अभिप्राप्य है;

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इससे संलग्न अनुसूची में वर्णित 38.20 हेक्टेयर (लगभग) या 94.39 एकड़ (लगभग) माप वाली भूमि में या उस पर के सभी अधिकार का अर्जन करने के अपने आशय की सूचना देती है।

टिप्पण 1 : इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक धारक संख्या एमसी/लैंड प्लान/ 22/8ए, तारीख 5 नवम्बर, 2022 को कलेक्टर, जिला पश्चिम बर्द्धमान, पश्चिम बंगाल के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता – 700001 के कार्यालय में या निदेशक तकनीकी (पी एण्ड पी), ईस्टर्न कोलफील्ड्स लिमिटेड, सांकतोड़िया, डाकघर दिशेरगढ़, जिला पश्चिम बर्द्धमान (पश्चिम बंगाल) पिनकोड – 713333 के कार्यालय में किया जा सकता है।

टिप्पण 2: उक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध है :-

“8. अर्जन की बाबत आपत्तियाँ.- (1) कोई व्यक्ति जो किसी भूमि में, जिसके बाबत धारा 7 के अधीन अधिसूचना जारी की गई है, हितबद्ध है, अधिसूचना के निकाले जाने से तीस दिनों के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा।

स्पष्टीकरण.- इस धारा के अंतर्गत यह आपत्ति नहीं मानी जायेगी, कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन संक्रियाएँ करना चाहता है और ऐसी संक्रियाएँ केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम अधिकारी को लिखित रूप में की जाएगी और सक्षम अधिकारी को या आपत्तिकर्ता को स्वयं सुने जाने या विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात और ऐसी अतिरिक्त जाँच यदि कोई हो, करने के पश्चात जो वह आवश्यक समझता है, वह या तो धारा 7 की उपधारा (1) के अधीन अधिसूचित भूमि के या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होता यदि भूमि या किसी ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते हैं।”

टिप्पण 3 : केन्द्रीय सरकार ने कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता – 700001 को, उक्त अधिनियम की धारा 3 के अधीन, अधिसूचना संख्यांक का.आ. सं. 2520, तारीख 27 मई, 1983, जो भारत के राजपत्र, भाग II, खण्ड 3, उप-खण्ड (ii), तारीख 11 जून, 1983 में प्रकाशित की गई थी, सक्षम प्राधिकारी नियुक्त किया है।

अनुसूची

मोहनपुर विस्तार फेज़ II ओपनकास्ट परियोजना

जिला- पश्चिम बर्द्धमान, राज्य – पश्चिम बंगाल

[रेखांक धारक संख्या एमसी/लैंड प्लान/ 22/8ए, तारीख 5 नवम्बर, 2022]

सभी अधिकार :

क्रम सं.	मौजा/ग्राम का नाम	ग्राम संख्यांक	पटवारी हल्का / जेएल संख्यांक	तहसील / पुलिस स्टेशन	जिला	क्षेत्र हेक्टेयर में	टिप्पण
1.	पहाड़गोड़ा	सलानपुर	जेएल-64	सलानपुर	पश्चिम बर्द्धमान	25.14	भाग
2.	बोलकुण्डा	सलानपुर	जेएल-67	सलानपुर	पश्चिम बर्द्धमान	0.42	भाग
3.	पर्वतपुर	सलानपुर	जेएल-66	सलानपुर	पश्चिम बर्द्धमान	12.64	भाग
कुल :						38.20	

कुल क्षेत्र : 38.20 हेक्टेयर (लगभग) या 94.39 एकड़ (लगभग)

1. ग्राम पहाड़गोड़ा में अर्जित किए जाने वाले प्लॉट संख्यांक : 294, 295, 296, 297, 298, 299, 300, 301, 302, 304, 308, 309, 310, 321, 322, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338/753, 338, 339, 340, 352/741, 363, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 405, 406, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 694, 703, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 728/738, 729, 730, 731, 732, 733, 737, 738, और 738/745.
2. ग्राम बोलकुण्डा में अर्जित किए जाने वाले प्लॉट संख्यांक : 917, 918, 920 और 936.
3. ग्राम पर्वतपुर में अर्जित किए जाने वाले प्लॉट संख्यांक : 116, 118, 133, 134, 135, 137, 138, 139, 140, 141, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 553, 554, 558/765, 558/766, 558/763, 558, 558/764, 559, 559/762, 559/761, 561, 563, 564, 565, 565/752, 567/760, 567/751, 567/757, 571, 578, 579, 580, 581, 582, 583, 584, 588, 589, 590, 591, 592, 593, 600, 608, 609, 610, 611/750, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 635, 751/759, 751/758 और 751/760.

सीमा वर्णन :

रेखा क-ख : यह रेखा पहाड़गोड़ा मौजा के प्लॉट सं. 251 पर स्थित बिंदु 'क' से शुरू होकर पश्चिम दिशा की ओर आगे बढ़ती है और पहाड़गोड़ा मौजा के प्लॉट सं. 249 के बिंदु 'ख' तक पहुँचती है।

रेखा ख-ग : यह रेखा पहाड़गोड़ा मौजा के प्लॉट सं. 249 के बिंदु 'ख' से दक्षिण दिशा की ओर आगे बढ़ती है और बिंदु 'ग' (पहाड़गोड़ा मौजा के प्लॉट संख्या 708 के कोणीय बिंदु) तक पहुँचती है।

रेखा ग-घ : यह रेखा बिंदु 'ग' (पहाड़गोड़ा मौजा के प्लॉट सं. 708 के कोणीय बिंदु) से शुरू होकर पूर्व दिशा से आगे बढ़ते हुए बोलकुण्डा मौजा से होकर गुजरती है और पहाड़गोड़ा मौजा के प्लॉट संख्या 729 में स्थित बिंदु 'घ' तक पहुँचती है।

रेखा घ-ङ.: पहाड़गोड़ा मौजा के प्लॉट सं. 729 में स्थित बिंदु 'घ' से शुरू होकर दक्षिण पूर्वी दिशा की ओर आगे बढ़ते हुए पर्वतपुर मौजा से गुजरती है और पर्वतपुर मौजा के प्लॉट सं. 563 में स्थित बिंदु 'ङ.' तक पहुँचती है।

रेखा ङ.-च : यह रेखा पर्वतपुर मौजा जेएल सं. 66 के प्लॉट सं. 563 में स्थित बिंदु 'ङ.' से शुरू होकर उत्तर-पूर्वी दिशा की ओर आगे बढ़ती है और पर्वतपुर मौजा के प्लॉट सं. 607 में स्थित बिंदु 'च' तक पहुँचती है।

रेखा च-छ : यह रेखा पर्वतपुर मौजा के प्लॉट सं. 607 में स्थित बिंदु 'च' से उत्तर-पश्चिमी दिशा की ओर से शुरू होती है और पर्वतपुर और मोहनपुर मौजा की सांझा मौजा सीमा से होकर गुजरती है और पर्वतपुर मौजा के प्लॉट सं. 596 में स्थित बिंदु 'छ' तक पहुँचती है।

रेखा छ-ज : यह रेखा पर्वतपुर मौजा के प्लॉट सं. 596 में स्थित बिंदु 'छ' से शुरू होकर दक्षिण-पश्चिमी दिशा की ओर आगे बढ़ती है और पर्वतपुर और मोहनपुर मौजा की सांझा मौजा सीमा से होकर गुजरती है और पर्वतपुर मौजा के प्लॉट सं. 587 में स्थित बिंदु 'ज' तक पहुँचती है।

रेखा ज-झ : यह रेखा पर्वतपुर मौजा के प्लॉट सं. 587 में स्थित बिंदु 'ज' से शुरू होकर उत्तर दिशा की ओर आगे बढ़ती है और पर्वतपुर और मोहनपुर मौजा की सांझा मौजा सीमा से होकर गुजरती है और पर्वतपुर मौजा के प्लॉट सं. 587 में स्थित बिंदु 'झ' तक पहुँचती है।

रेखा झ – ज: यह रेखा पर्वतपुर मौजा के प्लॉट सं. 587 में स्थित बिंदु 'झ' से शुरू होकर दक्षिण दिशा की ओर आगे बढ़ती है और पर्वतपुर और मोहनपुर मौजा की सांझा मौजा सीमा से होकर गुजरते हुए पर्वतपुर मौजा के प्लॉट सं. 587 और 585 के कोणीय बिंदु में स्थित बिंदु 'ज' तक पहुँचती है।

रेखा ज – ट: यह रेखा पर्वतपुर मौजा के प्लॉट सं. 587 और 585 के कोणीय बिंदु में स्थित बिंदु 'ज' से शुरू होकर उत्तर-पश्चिमी दिशा की ओर आगे बढ़ते हुए पर्वतपुर और मोहनपुर मौजा की सांझा मौजा सीमा से गुजरती है और पर्वतपुर मौजा के प्लॉट सं. 575 में स्थित बिंदु 'ट' तक पहुँचती है।

रेखा ट – ठ: यह रेखा पर्वतपुर मौजा के प्लॉट सं. 575 में स्थित बिंदु 'ट' से शुरू होकर दक्षिण-पश्चिमी दिशा की ओर आगे बढ़ती है और पर्वतपुर और मोहनपुर मौजा की सांझा मौजा सीमा से होकर गुजरते हुए पर्वतपुर मौजा के प्लॉट सं. 737 और 145 में स्थित बिंदु 'ठ' तक पहुँचती है।

रेखा ठ – ड: यह रेखा पर्वतपुर मौजा के प्लॉट सं. 737 और 145 में स्थित बिंदु 'ठ' से शुरू होकर उत्तर दिशा की ओर आगे बढ़ते हुए पहाड़गोड़ा और मोहनपुर के पर्वतपुर की सांझा मौजा सीमा से होकर गुजरती है और पहाड़गोड़ा मौजा के प्लॉट सं. 604 में स्थित बिंदु 'ड' तक पहुँचती है।

रेखा ड – ढ: यह रेखा पहाड़गोड़ा मौजा के प्लॉट सं. 604 में स्थित बिंदु 'ड' से शुरू होकर पश्चिम दिशा की ओर आगे बढ़ते हुए पहाड़गोड़ा मौजा से गुजरती है और पहाड़गोड़ा मौजा के प्लॉट सं. 362 में स्थित बिंदु 'ढ' तक पहुँचती है।

रेखा ढ – क: यह रेखा पहाड़गोड़ा मौजा के प्लॉट सं. 362 में स्थित बिंदु 'ढ' से शुरू होकर उत्तरी दिशा की ओर आगे बढ़ते हैं पहाड़गोड़ा मौजा से होकर गुजरती है और पहाड़गोड़ा मौजा के प्लॉट सं. 251 के बिंदु 'क' तक पहुँचती है।

[फा.सं. 43015/04/2022-एलएण्डआईआर]

राम शिरोमणि सरोज, निदेशक

MINISTRY OF COAL

New Delhi, the 14th December, 2022

S.O. 1309.—Whereas by the notification of the Government of India in the Ministry of Coal, number S.O.2911(E), dated the 27th June, 2022, issued under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii), dated the 27th June, 2022, the Central Government gave notice of its intention to prospect for coal in 38.20 hectares (approximately) or 94.39 acres (approximately) of the lands in the locality specified in the Schedule annexed to that notification ;

And, whereas, the Central Government is satisfied that coal is obtainable in a part of the said lands specified in the Schedule appended to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the lands measuring 38.20 hectares (approximately) or 94.39 acres (approximately) and all rights in or over the said lands as specified in the Schedule appended hereto;

Note 1: The plan bearing number MC/Land Plan/22/8A, dated the 5th November, 2022 of the area covered by this notification may be inspected at the office of the Collector, District Paschim Bardhaman, West Bengal or at the office of the Coal Controller, 1, Council House Street, Kolkata -700001, or at the office of the Director Technical (P & P), Eastern Coalfields Limited, Sanctoria, Post Office Dishergarh, District- Pashchim Burdwan (West Bengal) PIN Code- 713333.

Note 2 : Attention is hereby invited to the provisions of section 8 of the said Act which provides as follows:-

“8. Objections to acquisition.- (1) Any person interested in any land in respect of which a notification under section 7 has been issued may, within thirty days of the issue of the notification, object to the acquisition of the whole or of any part of the land or any rights in or over such land.

Explanation.- It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub section (1) shall be made to the competent authority in writing and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he

thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held him, for the decision of that Government.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act.”

Note 3: The Coal Controller, 1, Council House Street, Kolkata-700 001 has been appointed by the Central Government as the competent authority under section 3 of the said Act, *vide* notification number S.O. 2520, dated the 27th May, 1983, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 11th June, 1983.

SCHEDULE

Mohanpur Expansion Phase II Opencast Project

District- Pashchim Burdwan, State-West Bengal

[Plan bearing number MC/Land Plan/22/8A, dated the 5th November, 2022]

All Rights:

Sl. No.	Name of mouja/village	Village number	Patwari halka/JL number	Tahsil/ Police Station	District	Area in hectares	Remarks
1.	Pahargora	Salanpur	JL-64	Salanpur	Paschim Bardhaman	25.14	Part
2.	Bolkunda	Salanpur	JL- 67	Salanpur	Paschim Bardhaman	0.42	Part
3.	Parbatpur	Salanpur	JL-66	Salanpur	Paschim Bardhaman	12.64	Part
Total :						38.20	

Total area : 38.20 hectares (approximately) or 94.39 acres (approximately)

1. Plot numbers to be acquired in village Pahargora:

294, 295, 296, 297, 298, 299, 300, 301, 302, 304, 308, 309, 310, 321, 322, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338/753, 338, 339, 340, 352/741, 363, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 405, 406, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 694, 703, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 728/738, 729, 730, 731, 732, 733, 737, 738 and 738/745.

2. Plot numbers to be acquired in village Bolkunda:

917, 918, 920 and 936.

3. Plot numbers to be acquired in village Parbatpur:

116, 118, 133, 134, 135, 137, 138, 139, 140, 141, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 553, 554, 558/765, 558/766, 558/763, 558, 558/764, 559, 559/762, 559/761, 561, 563, 564, 565, 565/752, 567/760, 567/751, 567/757, 571, 578, 579, 580, 581, 582, 583, 584, 588, 589, 590, 591, 592, 593, 600, 608, 609, 610, 611/750, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 635, 751/759, 751/758 and 751/760.

Boundary description :

Line A-B: The line start from point 'A' plot number 251 of Pahargora Mouza trends in west direction and reaches at point 'B' of plot number 249 of Pahargora Mouza.

Line B-C: The line start from point 'B' plot number 249 of Pahargora Mouza trends in south direction and reaches at point number 'C' (corner point of plot number 708 of Pahargora Mouza).

- Line C-D: The line start from point 'C' (corner point of plot number 708 of Pahargora Mouza) trends in east direction passes through Bolkunda Mouza and reaches at point 'D' in plot number 729 of Pahargora Mouza.
- Line D-E: The line start from point 'D' in plot number 729 of Pahargora Mouza trends in south east direction passes through Parbatpur Mouza and reaches at point 'E' in plot number 563 of Parbatpur Mouza.
- Line E-F: The line start from point 'E' plot number 563 of Parbatpur Mouza J L number 66 trends in north east direction and reaches at point 'F' plot number 607 of Parbatpur Mouza.
- Line F-G: The line start from point 'F' plot number 607 of Parbatpur Mouza in North West direction and passes along common mouza boundary of Parbatpur and Mohanpur Mouza, reaches at point 'G' plot number 596 of Parbatpur Mouza.
- Line G-H: The line start from point 'G' plot number 596 of Parbatpur Mouza trends in south west direction and passes along common mouza boundary of Parbatpur and Mohanpur Mouza reaches at point 'H' plot number 587 of Parbatpur Mouza.
- Line H-I: The line start from point 'H' plot number 587 of Parbatpur Mouza trends in north direction and passes along common mouza boundary of Parbatpur and Mohanpur Mouza meets at point 'I' plot number 587 of Parbatpur Mouza.
- Line I-J: The line start from point 'I' plot number 587 of Parbatpur Mouza trends in south direction and passes along common mouza boundary of Parbatpur and Mohanpur Mouza meets at point 'J' corner point of plot number 587 and 585 of Parbatpur Mouza.
- Line J-K: The line start from point 'J' corner point of plot number 587 and 585 of Parbatpur Mouza trends in North West direction passes along common mouza boundary of Parbatpur and Mohanpur Mouza and meets at point 'K' plot number 575 of Parbatpur Mouza.
- Line K-L: The line start from point 'K' plot number 575 of Parbatpur Mouza trends in south west direction and passes along common mouza boundary of Parbatpur and Mohanpur Mouza meets at point 'L' plot number 737 and 145 of Parbatpur Mouza.
- Line L-M: The line start from point 'L' plot number 737 and 145 of Parbatpur Mouza trends in north direction along common mouza boundary of Parbatpur of Pahargora and Mohanpur and meets at point 'M' plot number 604 of Pahargora Mouza.
- Line M-N: The line start from point 'M' plot number 604 of Pahargora Mouza trends in West direction passes through Pahargora mouza and meets at point 'N' plot number 362 of Pahargora Mouza.
- Line N-A: The line start from point 'N' plot number 362 of Pahargora Mouza trends in north direction passes through of Pahargora mouza and meets at point number 'A' plot number 251 of Pahargora Mouza.

[F. No. 43015/04/2022-LA&IR]

RAM SHIROMANI SAROJ, Director

**सामाजिक न्याय और अधिकारिता मंत्रालय
(सामाजिक न्याय और अधिकारिता विभाग)**

नई दिल्ली, 12 दिसम्बर, 2022

का.आ. 1310.—भारत के राष्ट्रपति द्वारा संविधान के अनुच्छेद 338B के तहत स्वयं में निहित शक्तियों का प्रयोग करते हुए अपने हस्ताक्षर एवं मोहर से 25 नवम्बर, 2022 को जारी किए गए नियुक्ति अधिपत्र के अनुसरण में श्री हंसराज गंगाराम अहीर ने राष्ट्रीय पिछड़ा वर्ग आयोग (एनसीबीसी) में 2 दिसम्बर, 2022 से अध्यक्ष पद का कार्यभार संभाल लिया है

[फा. सं. 12015/28/2021-बी सी-II]

आर. पी. मीणा, संयुक्त सचिव

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT**(Department Of Social Justice And Empowerment)**

New Delhi, the 12th December, 2022

S.O. 1310.—In pursuance of the Warrant of Appointment issued on the 25th November, 2022 by the President of India under his hand and seal by virtue of powers vested in him under Clause (3) of Article 338B of the Constitution, Shri Hansraj Gangaram Ahir has assumed charge of the post of Chairman in the National Commission for Backward Classes (NCBC) with effect from the date 2nd December, 2022.

[F. No. 12015/28/2021-BC-II]

R.P. MEENA, Jt. Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 12 दिसम्बर, 2022

का.आ. 1311.—केंद्र सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, दिल्ली के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि के लिए या अगले आदेश तक, जो भी पहले हो, नियुक्त करती हैं:

1. श्रीमती अर्चना कंसल
2. श्रीमती मोनिका पंत
3. श्रीमती प्रवीण सिलोनिया
4. श्रीमती सरिता तोमर
5. श्रीमती शिखा भारद्वाज
6. श्रीमती रेणु भल्ला
7. श्रीमती रंजना मुखोपाध्याय
8. श्रीमती रश्मि सिंह
9. श्री दुर्गेश बंसल
10. श्री अंजु गुप्ता
11. श्री स्मृति साहनी
12. श्री प्रज्ञा भात्री
13. श्रीमती सिमरन कपूर
14. श्रीमती आस्था शर्मा
15. श्रीमती हिनु महाजन
16. श्री अजीत सिंह
17. श्री नीरज अग्रवाल
18. श्री मधुर बग्गा
19. श्री राजीव मल्होत्रा
20. श्रीमती डेज़ी गोयल
21. श्रीमती निशा तिवारी

22. श्रीमती रत्ना अरोड़ा
23. श्रीमती श्वेता कुशिक
24. श्रीमती अंजलि धवन
25. श्रीमती शालिनी त्रिवेदी
26. श्रीमती सुनरिका शर्मा
27. श्रीमती पूनम शर्मा
28. श्रीमती श्रुति रंजना मिश्रा
29. श्रीमती गरिमा भारद्वाज
30. श्रीमती स्वाति वांग्मू तिवारी
31. श्रीमती वाणी माधव
32. श्रीमती ईशा भारद्वाज
33. श्रीमती सुनीता सिंह
34. श्रीमती लीना सिंह
35. श्रीमती शिप्रा त्रिपाठी
36. श्रीमती अहाना बी चोपड़ा
37. श्रीमती समीक्षा शर्मा
38. श्रीमती अदिति शर्मा गर्ग
39. श्रीमती वंदना गौड़
40. श्रीमती ऋचा गुप्ता
41. श्रीमती विधि शर्मा
42. श्रीमती किरण कपूर
43. श्रीमती दीप्ति शर्मा
44. श्रीमती रुचिका अग्रवाल
45. श्री संदीप दत्ता
46. श्री दीपेंद्र भारद्वाज
47. श्री रोहित त्रिपाठी
48. श्री नरेश शांडिल्य
49. श्री आशीष भावलकर
50. श्री सुधांशु टोंक
51. श्री कमलेश मिश्रा
52. श्री श्याम मलिक
53. सुश्री अनीता चौधरी
54. सुश्री रश्मि जैन
55. श्रीमती रंजना यादव

56. श्री अंबरीश पाठक
57. श्री आदित्य नाथ उप्पल
58. श्रीमती भारती कुठियाल
59. सुश्री जे निधि
60. श्री हरिओम कौशिक
61. श्री उत्तपल दत्ता
62. श्री प्रशांत रंजन
63. श्री मयंक चतुर्वेदी
64. सुश्री सौमी पांडे
65. श्री आजाद जैन
66. श्री अतुल अधोलिया
67. डॉ तनिमा अधोलिया
68. श्री अशोक आनंद
69. श्री उमेश कुमार शर्मा
70. डॉ रूपाली सिंह
71. श्री मान बहादुर सिंह उर्फ मान सिंह
72. श्री आर. के. गुप्ता

[फा. सं. एम-11019/3/2021-डीओ (एफसी)]

मो. जाहिद शरीफ, अवर सचिव

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 12th September, 2022

S.O. 1311.— In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Delhi with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Smt. Archana Kansal
2. Smt. Monika Pant
3. Smt. Praveen Syllonia
4. Smt. Sarita Tomar
5. Smt. Shikha Bhardwaj
6. Smt. Renu Bhalla
7. Smt. Ranjana Mukhopadhyaya
8. Smt. Rashmi Singh
9. Sh. Durgesh Bansal
10. Sh. Anju Gupta
11. Sh. Smriti Sahni

12. Sh. Pragya Bhatni
13. Smt. Simran Kapoor
14. Smt. Astha Sharma
15. Smt. Hinu Mahajan
16. Sh. Ajit Singh
17. Sh. Neeraj Aggarwal
18. Sh. Madhur Bagga
19. Sh. Rajeev Malhotra
20. Smt. Daisy Goel
21. Smt. Nisha Tiwari
22. Smt. Ratna Arora
23. Smt. Shweta Kushik
24. Smt. Anjali Dhawan
25. Smt. Shalini Trivedi
26. Smt. Sunrika Sharma
27. Smt. Poonam Sharma
28. Smt. Shruti Ranjana Mishra
29. Smt. Garima Bhardwaj
30. Smt. Swati Wangnoo Tiwari
31. Smt. Vani Madhav
32. Smt. Isha Bhardwaj
33. Smt. Sunita Singh
34. Smt. Leena Singh
35. Smt Shipra Tripathi
36. Smt. Aahana B. Chopra
37. Smt. Samiksha Sharma
38. Smt. Aditi Sharma Garg
39. Smt. Vandana Gaur
40. Smt. Richa Gupta
41. Smt. Vidhi Sharma
42. Smt. Kiran Kapoor
43. Smt. Deepti Sharma
44. Smt. Rochika Aggarwal
45. Sh. Sundeep Dutta
46. Sh. Deependra Bhardwaj
47. Sh. Rohit Tripathi
48. Sh. Naresh Shandilya
49. Shri Ashish Bhavalkar
50. Shri Sudhanshu Tonk
51. Shri Kamlesh Mishra
52. Shri Shyam Malik

53. Ms. Anita Choudhary
54. Ms. Rashmi Jain
55. Smt. Ranjana Yadav
56. Shri Ambrish Pathak
57. Shri Aditya Nath Uppal
58. Smt. Bharati Kuthiyala
59. Ms. J Nidhi
60. Shri Hariom Kaushik
61. Shri Utpal Dutta
62. Shri Prashant Ranjan
63. Shri Mayank Chaturvedi
64. Ms. Soumy Pandey
65. Shri Azad Jain
66. Shri Atul Adholiya
67. Dr. Tanim Adholiya
68. Shri Ashok Anand
69. Shri Umesh Kumar Sharma
70. Dr. Roopali Singh
71. Sh. Mann Bahadur Singh Alias Maann Singh
72. Sh. R.K Gupta

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

नई दिल्ली, 12 सितम्बर, 2022

का.आ. 1312.—केंद्र सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, बेंगलुरु के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि के लिए या अगले आदेश तक, जो भी पहले हो, नियुक्त करती हैं:

1. श्री साई दाता वामशी
2. श्री अशोक बी एस
3. श्रीमती सौम्या हेमंथ
4. श्री धनंजय पदरायी
5. श्रीमती दक्षिणायनी भट्ट
6. श्रीमती ज्योति मेनन
7. श्रीमती आशा जगदीश
8. श्री श्रीधर एच.सी
9. श्रीमती अर्चना राव
10. श्री गणपति भट्ट

11. श्री महेश के भारद्वाज
12. श्रीमती नागलक्ष्मी
13. श्री सोमशेखर
14. श्री बीजी रविकुमार
15. श्रीमती निर्मला अर्ननाथी
16. श्रीमती बाला विश्वनाथ
17. श्री हेमंथ
18. श्रीमती विद्या रविशंकर
19. श्री गुरु नाथ के
20. श्री जीवी पद्मनाभ
21. श्रीमती मैत्री गौड़ा
22. श्री नागेश के गौड़ा
23. श्री चंद्रशेखर रेड्डी
24. श्री चंद्र एम
25. श्रीमती सौम्या
26. श्रीमती मंजूनाथ बीवी
27. श्रीमती अंजनेय गौड़ा
28. श्री जीएस शोबा
29. श्री सुरेश पोलपल्ली
30. श्री अरुण बानू एन
31. श्री एस विनोद रेड्डी
32. श्रीमती संगीता कुमारी
33. श्री आरएस चंद्रशेखर
34. श्री आरएन हनुमंथप्पा
35. श्री आर जयदेव
36. श्रीमती प्रफुल्ल जोरपुर
37. श्री मधुसुदा वी
38. श्रीमती हेमलता एस
39. श्री नरसिम्हालु
40. श्री बी हरिनाथी
41. श्री वैरामुडी
42. श्रीमती भारती आर
43. श्री एसटी कोडंदरमा
44. श्री आनंद तो

45. श्री दीपक कुमार एम
46. श्री अभिषेक लिंगर
47. श्री अश्विन हसन
48. श्री विजयकृष्ण के.आर
49. श्री चित्रशेखर
50. श्रीमती एमजे कुमादावल्ली
51. श्रीमती सुप्रीत जी शेट्टी
52. श्री नवीन एमजी
53. श्री जयदेवी मोहनचंद
54. श्री आलोक उर्स

[फा. सं. एम-11019/3/2021- डीओ (एफसी)]

मो. जाहिद शरीफ अवर सचिव,

New Delhi, the 12th September, 2022

S.O. 1312.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Bengaluru with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Sh. Sai Data Vamshi
2. Sh. Ashok B.S.
3. Smt. Soumya Hemanth
4. Sh. Dhananjay Padrayee
5. Smt. Dakshayani Bhat
6. Smt. Jyothi Menon
7. Smt. Asha Jagadeesh
8. Sh. Sreedhar H.C.
9. Smt. Archana Rao
10. Sh. Ganapathi Bhat
11. Sh. Mahesh K Bharadwaj
12. Smt. Nagalakshmi
13. Sh. Somashekar
14. Sh. B.G. Ravikumar
15. Smt. Nirmala Arnarnath
16. Smt. Bala Vishwanath
17. Sh. Hemanth
18. Smt. Vidya Ravishankar
19. Sh. Gurunath. K
20. Sh. G.V Padmanabha
21. Smt. Maithri Gowda

22. Sh. Nagesh K Gowda
23. Sh. Chandra Shekhar Reddy
24. Sh. Chandru M
25. Smt. Sowmya
26. Smt. Manjunath B V
27. Smt. Anjaneya Gowda
28. Sh. GS Shoba
29. Sh. Suresh Polepalli
30. Sh. Arun Banu N
31. Sh. S Vinod Reddy
32. Smt. Sangeetha Kumari
33. Sh. R.S Chandrashekhar
34. Sh. R N Hanumanthappa
35. Sh. R Jayadev
36. Smt. Prafulla Jorpur
37. Sh. Madhusuda V
38. Smt Hemalatha S
39. Sh. Narasimhalu
40. Sh. V Harinath
41. Sh. Vairamudi
42. Smt. Bharathi R
43. Sh. S T Kodandarama
44. Sh. Anand T
45. Sh. Deepak Kumar M
46. Sh. Abhishek Iyengar
47. Sh. Ashwin Hassan
48. Sh. Vijayakrishna K R
49. Sh. Chithrashekar
50. Smt. M. J. Kumadavalli
51. Smt. Supreeth G Shetty
52. Sh. Naveen MG
53. Sh. Jayadev Mohanchand
54. Sh. Alok Urs

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

नई दिल्ली, 12 सितम्बर, 2022

का.आ.1313.—केंद्र सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, चेन्नई के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि के लिए या अगले आदेश तक, जो भी पहले हो, नियुक्त करती हैं:

1. श्री के. नेल्लैयाम्माल
2. श्री ए महाराजन
3. श्री श्री कला
4. श्रीमती एस शालिनी
5. श्रीमती बी जयलक्ष्मी
6. श्रीमती गायत्री रघुराम
7. श्री फेप्पी शिव
8. श्री के. धनंजयन
9. श्री चेन्नई सिवा
10. श्री वी. दशरथन
11. श्री राजरथुनाम
12. श्री दास पांडियन
13. श्री एन सिद्धार्थ
14. श्री एस. आशिम बाशा
15. श्रीमती एम. सरला
16. श्रीमती अनीता वेंकट
17. श्री दुरई शंकरन
18. श्री सी धर्मराज
19. श्रीमती एस कविता
20. श्रीमती सरमा केवीएम
21. श्री को. वेंकटेशन
22. श्रीमती कुमारी कृष्णन
23. श्री एएनएस प्रसाद
24. श्री गुणशीलन आर
25. श्री नारायण त्रिपाठी
26. श्री एम जे क्लेरेंस
27. श्री वी जयरामन
28. श्री आर. सुंदरराजन
29. श्री दीना (अभिनेता)
30. श्रीमती हेमा लता
31. श्रीमती गिरिजा मनोरमा
32. श्री आर कल्याण सुंदरम
33. श्री केएस बालमुरुगन
34. श्री ओगाई नादराजन
35. श्रीमती एस राधा
36. श्री आर भारतशिमान
37. श्री पी. शिवशक्ति
38. श्रीमती मदन लता
39. श्री एस. गोगुलान
40. श्री एम गोपाल सिंह
41. श्रीमती एम. प्रभा देवी
42. श्री कनल कन्नान

43. श्री जी. अरुमुगम
44. श्री आर एम. सत्यमूर्ति
45. श्रीमती एस. अनीता बाई
46. श्रीमती पद्म विजयराघवन
47. श्री शिव अमुथराजिनी
48. डॉ ई. सुधा
49. श्रीमती संगीता
50. श्री मारीमुथु
51. श्री आर पत्नीर सेल्वम

[फा. सं. एम-11019/3/2021-डीओ(एफसी)]

मो. जाहिद शरीफ, अवर सचिव

New Delhi, the 12th September, 2022

S.O. 1313.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Chennai with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Sh. K. Nellaiyammal
2. Sh. A. Maharajan
3. Sh. Sri Kala
4. Smt. S Shalini
5. Smt. B Jayalekshmi
6. Smt. Gayathri Raghuram
7. Sh. Fefsi Siva
8. Sh. K. Dhananjeyan
9. Sh. Chennai Siva
10. Sh. V. Dhasarathan
11. Sh. Rajarathunam
12. Sh. Das Pandian
13. Sh. N. Siddharth
14. Sh. S. Ashim Basha
15. Smt. M. Sarala
16. Smt. Anitha Venkat
17. Sh. Durai Sankaran
18. Sh. C. Dharmaraj
19. Smt. S. Kavitha
20. Smt. Sarma KVM
21. Sh. Ko. Venkatesan
22. Smt. Kumari Krishnan
23. Sh. A.N.S Prasad
24. Sh. Gunaseelan R
25. Sh. Narayan Tripathi
26. Sh. M. J Clarence

27. Sh. V Jayaraman
28. Sh. R. Soundrarajan
29. Sh. Dheena (Actor)
30. Smt. Hema Latha
31. Smt. Girija Manorahan
32. Sh. R Kalyana Sundaram
33. Sh. KS Balamurugan
34. Sh. Ogai Nadarajan
35. Smt. S. Radha
36. Sh. R. Bharathshiman
37. Sh. P. Sivasakthi
38. Smt. Madhan Latha
39. Sh. S. Gogulan
40. Sh. M. Gopal Singh
41. Smt. M. Prabha Devi
42. Sh. Kanal Kannan
43. Sh. G. Arumugam
44. Sh. RM. Sathiyamoorthy
45. Smt. S. Anitha Bai
46. Smt. Padma Vijayaraghavan
47. Sh. Siva Amutharajini
48. Dr. E. Sudha
49. Smt. Sangeetha
50. Sh. Marimuthu
51. Sh. R. Panneer Selvam

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

नई दिल्ली, 12 सितम्बर, 2022

का.आ. 1314.—केंद्र सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, गुवाहाटी के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि के लिए या अगले आदेश तक, जो भी पहले हो, नियुक्त करती हैं:

1. श्रीमती नम्रता दत्ता
2. श्रीमती मृणालकांति मेध्वी
3. श्रीमती मीता सेन
4. श्री भगवत प्रीतम दत्ता
5. श्रीमती नृपेन कलिता
6. श्री अमरज्योति डेका
7. श्रीमती पूर्णिमा सैकिया
8. श्रीमती मंजुला बरुआ
9. श्री मनमठ बरुआह

10. श्री रुद्र जयंत भगवती
11. श्री निर्मल बेज़बरा
12. श्री नयन निर्वाण बरुआ
13. श्री दीपक कुमार राँय
14. श्री अभिजीत शर्मा
15. श्री बनलता बैश्य
16. श्री शरत दास
17. श्री सुशील पांडिया
18. श्रीमती निशा महंत
19. श्री रजनीश दुआरा
20. श्री भूपेंद्र कमान
21. श्री प्रवीन कुमार कलिता
22. श्री राजीव दत्ता
23. श्रीमती प्रांजल के सैकिया
24. श्री गार्गी दत्ता
25. श्रीमती स्मिता वर्मन
26. श्री राम चरण भराली
27. श्री शैलेंद्र पांडे
28. श्रीमती मिताली सरमा
29. श्री भूपेन नाथो
30. श्रीमती नव ज्योति कुंअर
31. श्रीमती सोनमोनी बोरो
32. डॉ जूरी सरमा
33. श्री अनुराग रुद्र
34. श्री हमागशु शर्मा
35. श्रीमती अदिति भुयान
36. श्री हेम चंद्रा डोले
37. श्रीमती रूमी भूयम
38. श्रीमती सुब्रता खजांची
39. श्री दयाल कृष्ण नाथ
40. श्री सिबानु बोरा

[फा. सं. एम-11019/3/2021-डीओ (एफसी)]

मो. जाहिद शरीफ, अवर सचिव

New Delhi, the 12th September, 2022

S.O. 1314.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Guwahati with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Smt. Namrata Datta
2. Smt. Mrinalkanti Medhi
3. Smt. Mita Sen
4. Shri Bhagawat Pritam Dutta
5. Smt. Nripen Kalita
6. Shri Amarjyoti Deka
7. Smt. Purnima Saikia
8. Smt. Manjula Barua
9. Shri Manmath Baruah
10. Shri Rudra Jayanta Bhagawati
11. Shri Nirmal Bezbaruah
12. Shri Nayan Nirban Baruah
13. Shri Deepak Kumar Roy
14. Shri Abhijit Sharmah
15. Shri Banalata Baishya
16. Shri Sharat Das
17. Shri Sushil Pandiya
18. Smt. Nisha Mahanta
19. Shri Rajnish Duara
20. Shri Bhupender Kaman
21. Shri Prabin Kumar Kalita
22. Shri Rajib Dutta
23. Smt. Pranjal K. Saikia
24. Shri Gargee Dutta
25. Smt. Smita Barman
26. Shri Ram Charan Bharali
27. Shri Shailendra Pandey
28. Smt. Mitali Sarma
29. Shri Bhupen Nath
30. Smt. Naba Jyoti Konwar
31. Smt. Sonmoni Boro
32. Dr. Juri Sarma
33. Shri Anurag Rudra
34. Shri Hmangshu Sharma
35. Smt. Aditi Bhuyan
36. Shri Hem Chandra Doley
37. Smt. Rumi Bhuyam
38. Smt. Subrata Khajanchi
39. Shri Dayal Krishna Nath
40. Shri Sibanu Borah

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

नई दिल्ली, 12 सितम्बर, 2022

का.आ. 1315.—केंद्र सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, कोलकाता के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि के लिए या अगले आदेश तक, जो भी पहले हो, नियुक्त करती हैं:-

1. श्री काजी मासूम अख्तर
2. डॉ अंजन देव बिस्वास
3. श्री सौमिक डे सरकार
4. श्री प्रणय राँय
5. श्री सरबरी मुखर्जी
6. श्रीमती रीता घोषाल
7. श्री सुवेंदु भट्टाचार्य
8. श्रीमती कंचना मोइत्रा
9. श्री राणादेब मजूमदार
10. श्री सुमन बनर्जी
11. श्री किशोर कर
12. श्री संचारी दास
13. श्री सोमनाथ बनर्जी
14. श्री तरुणज्योति तिवारी
15. श्री गौरव लामा
16. श्रीमती मौमिता सरकार
17. श्री समीर मित्रा
18. श्री तामोघनो घोष
19. श्रीमती पापिया अधिकारी
20. श्री साधान तालुकदार
21. श्री देवाशीष जाना
22. श्रीमती पायल भट्टाचार्य
23. श्री प्रदीप कुमार घोष
24. श्रीमती रूपांजना मित्रा
25. श्री अरिजीत हलदर
26. श्री राकेश दास
27. श्री सुदीप बसु
28. श्री संजय दास
29. श्री मोहन चंद्र घोष
30. श्रीमती सुप्रीति भद्र
31. श्रीमती अनिदिता मैत्रा पॉल
32. श्रीमती मल्लिका राँय
33. श्रीमती मौमिता राँय

34. श्री अमित डे
35. श्री सुदीप दत्ता
36. श्रीमती गौरी सेन गुप्ता
37. श्रीमती अंजना मलिक
38. श्रीमती बिभा चौधरी
39. डॉ सास्वती मुखर्जी
40. श्रीमती देबमित्र चंदा भारद्वाज
41. श्री उत्तम राय
42. श्री पार्थ सारथी चौधरी
43. श्री सारथी गुहा
44. श्रीमती माला दत्ता घोष
45. श्रीमती देबजानी हलदर
46. श्रीमती पूजा बनर्जी
47. श्रीमती पारिजात चौधरी
48. श्री दिव्येंदु दास बाउल
49. श्रीमती जयिता धार चक्रवर्ती
50. श्रीमती परमिता दत्ता
51. श्री नंद कुमार सिंह
52. श्री देबाशीष अय्यर

[फा. सं. एम-11019/3/2021-डीओ(एफसी)]

मो. जाहिद शरीफ, अवर सचिव

New Delhi, the 12th September, 2022

S.O. 1315.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Kolkata with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Shri Kaji Masum Akhtar
2. Dr. Anjan Dev Biswas
3. Shri Soumik De Sarkar
4. Shri Pranay Roy
5. Shri Sarbari Mukherjee
6. Smt. Rita Ghoshal
7. Shri Suvendu Bhattacharya
8. Smt. Kanchana Moitra
9. Shri Ranadeb Mazumdar
10. Shri Suman Banerjee
11. Shri Kishore Kar
12. Shri Sanchari Das

13. Shri Somnath Banerjee
14. Shri Tarunjoyti Tewari
15. Shri Gourav Lama
16. Smt. Moumita Sarkar
17. Shri Samir Mitra
18. Shri Tamoghno Ghosh
19. Smt. Papia Adhikari
20. Shri Sadhan Talukdar
21. Shri Devasish Jana
22. Smt. Payel Bhattacharya
23. Shri Pradip Kumar Ghosh
24. Smt. Rupanjana Mitra
25. Shri Arijit Halder
26. Shri Rakesh Das
27. Shri Sudip Basu
28. Shri Sanjoy Das
29. Shri Mohan Chandra Ghosh
30. Smt. Supriti Bhadra
31. Smt. Anindita Maitra Paul
32. Smt. Mallika Roy
33. Smt. Moumita Roy
34. Shri Amit Dey
35. Shri Sudip Dutta
36. Smt. Gouri Sen Gupta
37. Smt. Anjana Mullick
38. Smt. Bibha Chowdhury
39. Dr. Saswati Mukherjee
40. Smt. Debamitra Chanda Bhardwaj
41. Shri Uttam Ray
42. Shri Partha Sarathi Chowdhury
43. Shri Sarathi Guha
44. Smt. Mala Datta Ghosh
45. Smt. Debjani Halder
46. Smt. Pooja Banerjee
47. Smt. Parijat Chowdhury
48. Shri Divyendu Das Baul
49. Smt. Jayita Dhar Chakraborty
50. Smt. Paramita Dutta
51. Shri Nand Kumar Singh
52. Shri Debashish Aiyer

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

नई दिल्ली, 12 सितम्बर, 2022

का.आ. 1316.—केंद्र सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, मुंबई के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि के लिए या अगले आदेश तक, जो भी पहले हो, नियुक्त करती है:

1. श्रीमती अनघा बेडेकर
2. श्रीमती श्वेता मांजरेकर
3. श्री महेन्द्र मिलापचंद कानूनगो
4. श्रीमती नीता वाजपेयी
5. श्रीमती बिमल बूटा
6. श्रीमती शलाका सालवी
7. श्री राजू लक्ष्मण अंबातर
8. श्री प्रमोद कमलेश मिश्रा
9. श्रीमती पल्लवी सप्रे
10. श्रीमती अर्चना निंबालकर
11. श्री किसान महादेव छडपडे
12. श्री राहुल प्रल्हादराव कांबले
13. श्रीमती पल्लवी चेतन तंहानकर
14. श्री आदित्यनाथ दीनानाथ दुबे
15. श्री उदयप्रताप
16. श्री रमाकांत गुप्ता
17. श्री संचित दशरथ यादव
18. श्रीमती पूर्णिमा विजय ववहाल
19. श्रीमती गीतांजलि प्रल्हादजी
20. श्री उमेश शरदचंद्र
21. श्री मकरंद मोहन
22. श्री राहुल अनंत वैद्य
23. श्रीमती मिनाल श्याम
24. श्री श्याम शिवाजी थोम्ब्रे
25. श्री संजय मधुकर
26. श्रीमती सीमा सिंह
27. श्रीमती पल्लवी साहनी शर्मा
28. श्रीमती निधि शर्मा
29. श्री कुशल ईमानदार
30. श्री योगेश कुलकर्णी
31. श्री सुरेंद्र कुलकर्णी
32. श्री जगदीश निषाद
33. श्री अरुण शेखर
34. श्री अजीत गौड़

35. श्री संदीप इंदुलकर
36. श्री संजय वर्मा
37. श्री प्रकाश मेनन
38. श्री नन्द किशोर पंत
39. श्री ओंकार नाथ मिश्रा
40. श्री पंकज जायसवाल
41. सुश्री मैत्रेयी जोशी
42. श्री मुकुंद मराठे
43. सुश्री विनिता बरोट
44. डॉ आशा नैथानी दयामा
45. सुश्री अनुराधा सिंह
46. सुश्री कविता विभावरी
47. श्री अमित चव्हाण
48. श्री कमलेश प्रफुल्ल जोशी
49. श्री गिरधर जी सिंह
50. श्री चेतन माथुर
51. श्रीमती ज्योत्सना गर्ग
52. श्री विनोद गनात्रा
53. श्री राजेंद्र मोहापात्रा
54. श्रीमती रेबेका चांगकिजा सेमा
55. श्री ज्ञान सहाय
56. श्री मिलिंद लेले
57. श्रीमती आरती व्यास पटेल
58. श्री वैशल शाह
59. श्री उदीप टंडन
60. श्री अरुणोदय शर्मा
61. श्रीमती चारु जोशी
62. डॉ. देवेंद्र काफिर
63. श्री आकाशादित्य लामा
64. श्री सुरिंदर कुमार
65. श्री निशि सिंघला
66. श्री कुलदीप सिन्हा
67. सुश्री अंकिता तिवारी
68. श्रीमती सरिता सिंह
69. श्रीमती शुक्ला सिंह
70. श्रीमती माला डे
71. श्री ए.एम. तुराज़
72. श्री जय मिश्रा
73. श्रीमती मिताली नाग
74. श्री विजय पांडे

75. श्री हरिशंकर सूफी
76. श्री विवेक उपाध्यायः
77. श्री जसविंदर (बल्लू) सलूजा
78. श्री जयेश मेस्त्री
79. श्री जी.के. देसाई
80. श्री करनजीत (किट्टू) सलूजा
81. श्रीमती सावित्री शर्मा
82. श्री रवि शंकर प्रसाद
83. श्री बृज मोहन विश्वकर्मा
84. श्री गौतम मुखर्जी
85. श्री संजय भाटिया
86. श्री सचिन कौशिक
87. श्री विजय शेटी
88. श्री संधीर फ्लोरा
89. श्रीमती किरण डागर
90. श्री पुनीत सिंह
91. श्री अमित कुमार
92. श्रीमती वैभव पवार
93. श्री रमेश शर्मा
94. श्री देवेन्द्र मालवीय
95. डॉ विवेक कुमार शुक्ला
96. श्री गंगाधर शिवलाल अग्रवाल
97. श्री निवृत्ति तुकाराम यादव
98. सुश्री चांद सुल्ताना
99. सुश्री लिपिका बोराह
100. सुश्री प्रज्ञा सिंह
101. सुश्री सयाली कुलकर्णी
102. श्रीमती उषा रविचंद्रन
103. श्री गणेश अय्यर
104. श्री नरेश तल्ला
105. श्रीमती सिरीशा वी. राव
106. श्री राधाकृष्णन पिल्लै
107. श्री बसवा वी. मोगवीरा

[फा. सं. एम-11019/3/2021-डीओ(एफसी)]

मो. जाहिद शरीफ, अवर सचिव

New Delhi, the 12th September, 2022

S.O. 1316.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Mumbai with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Smt. Anagha Bedekar
2. Smt. Shweta Manjrekar
3. Shri Mahendra Milapchand Kanungo
4. Smt. Nita Bajpai
5. Smt. Bimal Bhuta
6. Smt. Shalaka Salavi
7. Shri Raju Laxman Ambator
8. Shri Pramod Kamlesh Mishra
9. Smt. Pallavi Sapre
10. Smt. Archana Nimbalkar
11. Shri Kisan Mahadeo Chdpade
12. Shri Rahul Pralhadrao Kamble
13. Smt. Pallavi Chetan Tamhankar
14. Shri Adityanath Dinanath Dubey
15. Shri Udaypratap
16. Shri Ramakant Gupta
17. Shri Sanchet Dasharath Yadav
18. Smt. Purnima Vijay Vavhal
19. Smt. Gitanjali Pralhadji
20. Shri Umesh Sharadchandra
21. Shri Makarand Mohan
22. Shri Rahul Anant Vaidya
23. Smt. Minal Shyam
24. Shri Shyam Shivaji Thombre
25. Shri Sanjay Madhukar
26. Smt. Seema Singh
27. Smt. Pallavi Sahney Sharma
28. Smt. Nidhi Sharma
29. Shri Kushal Imandar
30. Shri Yogesh Kulkarni
31. Shri Surendra Kulkarni
32. Shri Jagdish Nishad
33. Shri Arun Shekhar
34. Shri Ajit Goud
35. Shri Sandip Indulkar
36. Shri Sanjay Verma
37. Shri Prakash Menon
38. Shri Nand Kishore Pant
39. Shri Onkar Nath Mishra
40. Shri Pankaj Jaiswal
41. Sushri Maitreyi Joshi
42. Shri Mukund Marathe
43. Sushri Binita Barot
44. Dr. Asha Naithani Dayama
45. Sushri Anuradha Singh
46. Sushri Kavita Vibhavari
47. Shri Amit Chavan

48. Shri Kamlesh Praful Joshi
49. Shri Girdhar G Singh
50. Shri Chetan Mathur
51. Smt. Jyotsna Garg
52. Shri Vinod Ganatra
53. Shri Rajendra Mohapatra
54. Smt. Rebecca Changkija Sema
55. Shri Gyan Sahay
56. Shri Milind Lele
57. Smt. Aarti Vyas Patel
58. Shri Vaishal Shah
59. Shri Adeep Tandon
60. Shri Arunoday Sharma
61. Smt. Charu Joshi
62. Dr. Devendra Kafir
63. Shri Akashaditya Lama
64. Shri Surinder Kumar
65. Shri Nishi Singhla
66. Shri Kuldeep Sinha
67. Ms. Ankita Tiwari
68. Smt. Sarita Singh
69. Smt. Shukla Singh
70. Smt. Mala Dey
71. Shri A.M. Turaz
72. Shri Jay Mishra
73. Smt. Mitaali Nag
74. Shri Vijay Pande
75. Shri Harishankar Sufi
76. Shri Vevek Upadhyay
77. Shri Jaswinder (Ballu) Saluja
78. Shri Jayesh Mestry
79. Shri G. K. Desai
80. Shri Karanjeet (Kittu) Saluja
81. Smt. Savitri Sharma
82. Shri Ravi Shankar Prasad
83. Shri Brij Mohan Vishwakarma
84. Shri Gautam Mukherjee
85. Shri Sanjay Bhatia
86. Shri Sachin Kaushik
87. Shri Vijay Shetty
88. Shri Sandhir Flora
89. Smt. Kiran Dagar
90. Shri Puneet Singh
91. Shri Amit Kumar
92. Smt. Vaibhavi Pawar
93. Shri Ramesh Sharma
94. Shri Devendra Malviya
95. Dr. Vivek Kumar Shukla
96. Shri Gangadhar Shivilal Agarwal
97. Shri Nivritti Tukaram Yadav
98. Ms. Chand Sultana
99. Ms. Lipika Borah
100. Ms. Pragya Singh

101. Ms. Sayali Kulkarni
102. Smt. Usha Ravichandran
103. Shri Ganesh Iyer
104. Shri Naresh Talla
105. Smt. Sirisha V. Rao
106. Shri Radhakrishnan Pillai
107. Shri Basava V. Mogaveera

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

नई दिल्ली, 12 सितम्बर, 2022

का.आ. 1317.—केंद्र सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, तिरुवनंतपुरम के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि के लिए या अगले आदेश तक, जो भी पहले हो, नियुक्त करती हैं:-

1. डॉ जॉर्ज ओनाक्कुर
2. श्री सूर्य कृष्णमूर्ति
3. श्री विजयकृष्णन
4. श्री आर. प्रदीप
5. श्री साजिकामाला (साजी कुमार जी)
6. श्री कावलम शशिकुमार
7. डॉ नयना आर.
8. श्री एस. अनिल
9. एडवोकेट स्वप्नाजीत
10. श्रीमती जलजा
11. श्रीमती अनु जोसेफ
12. श्री विवेक गोपन जी
13. श्रीमती उमा एम नायर
14. श्री संदीप कुमार वी.
15. श्री राजसेनन
16. श्री जयराज कैमल
17. श्री एस. जयशंकर
18. श्री सुवर्णप्रसाद एम
19. श्री आनंद एस नायर
20. श्री कलाधरनपिल्लई आर
21. श्री अजय थुंडाथिल
22. श्री सी. शिवनकुट्टी
23. श्री अनूप के

24. श्री के पी कैलासनाथन
25. श्री आर. अजयकुमार
26. श्री अनिल कुमार के.एस.
27. श्री लिबिनराज एन
28. श्री नयन बी एस
29. श्री पी. गोपीनाथ
30. श्री राजन थारायील
31. श्री जी.एम. महेश
32. श्री सी.सी. सुरेश
33. श्री सिवकुमार अमरुथकला
34. श्री हरिश पी कत्याप्रथ
35. श्री एम एन सुंदर राज
36. श्री के.वी. राजेन्द्रन
37. श्री यदु विजयकृष्णन
38. श्री एम बी पद्मकुमार
39. श्री टी. जयचंद्रन
40. श्री श्रीवल्लभन बी
41. श्री शिजिल के
42. श्री मेलिला राजशेखर
43. श्री रंजीलाल दामोदरन
44. श्रीमती भावना टी एम
45. श्री पी. श्रीकुमार
46. श्री संदीप सेनन
47. श्री विजयकृष्णन नायर
48. श्रीमती आशा नाथ जी एम

[फा. सं. एम-11019/3/2021-डीओ(एफसी)]

मो. जाहिद शरीफ, अवर सचिव

New Delhi, the 12th September, 2022

S.O. 1317.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Thiruvananthapuram with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Dr. Gearge Onakkur
2. Shri Surya Krishnamoorthi
3. Shri Vijayakrishnan
4. Shri R. Pradeep
5. Shri Sajikamala (Saji Kumar G)

6. Shri Kavalam Sasikumar
7. Dr. Nayana R.
8. Shri S. Anil
9. Adv. Swapanajith
10. Smt. Jalaja
11. Smt. Anu Joseph
12. Shri Vivek Gopan G
13. Smt. Uma M Nair
14. Shri Sandeep Kumar V.
15. Shri Rajasenan
16. Shri Jayaraj Kaimal
17. Shri S. Jayasankar
18. Shri Suvarnaprasad M
19. Shri Anand S Nair
20. Shri Kaladharanpillai R
21. Shri Ajay Thundathil
22. Shri C. Sivankutty
23. Shri Anoop K
24. Shri K.P. Kailasanathan
25. Shri R. Ajayakumar
26. Shri Anil Kumar K.S.
27. Shri Libinraj N
28. Shri Nayan B S
29. Shri P. Gopinath
30. Shri Rajan Tharayil
31. Shri G.M. Mahesh
32. Shri C.C. Suresh
33. Shri Sivakumar Amruthakala
34. Shri Harish P Katayaprath
35. Shri M N Sunder Raj
36. Shri K.V. Rajendran
37. Shri Yadu Vijaykrishnan
38. Shri M B Padmakumar
39. Shri T. Jayachandran
40. Shri Sreevallabhan B
41. Shri Shijil K
42. Shri Melilaa Rajasekhar
43. Shri Renjilal Damodaran
44. Smt. Bhavana T.M.
45. Shri P. Sreekumar
46. Shri Sandip Senan
47. Shri Vijaykrishnan Nair
48. Smt. Asha Nath G.S.

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

नई दिल्ली, 28 अक्टूबर, 2022

का.आ. 1318.—केंद्र सरकार, केंद्रीय फिल्म प्रमाणन बोर्ड, कटक के संबंध में इस मंत्रालय की दिनांक 05.10.2018 की अधिसूचना संख्या एम-11019/3/2018-डीओ (एफसी) तथा दिनांक 13.10.2020 की अधिसूचना संख्या एम-11019/4/2020-डीओ (एफसी) का अधिक्रमण करते हुए और चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, कटक के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि या अगले आदेश तक, जो भी पहले हो, के लिए नियुक्त करती है:

1. श्री भुवानंद त्रिपाठी
2. डॉ रवींद्र नारायण बेहरा
3. श्री रवीन्द्रनाथ सार
4. श्री शिव नारायण सिंह
5. श्री श्रीकांत दास
6. श्री लालतेन्दु बटु
7. श्री संजीव कुमार मिश्रा
8. श्री काननबाला पट्टनायक
9. श्री निताईचरण नंदा
10. श्रीमती रश्मि रेखा दास
11. श्रीमती कल्पना पट्टनायक
12. श्रीमती अर्चना प्रियदर्शनी पलाई
13. श्री निरंजन मिश्रा
14. डॉ. राजेश्वरी पैकराय
15. श्री जतिंद्र नायक
16. श्रीमती संगीता दाश
17. डॉ सुनीति मुंड
18. श्री मदन मोहन प्रधान
19. श्री अखिला पट्टनायक
20. श्रीमती संगीता माझी
21. श्रीमती बंदना कुनुंगो
22. श्रीमती मनस्मिता खुंटिया
23. श्री हितेश महापात्र
24. श्रीमती अंबिका प्रसाद पांडा

[फा. सं. एम-11019/3/2021-डीओ(एफसी)]

मो. जाहिद शरीफ, अवर सचिव

New Delhi, the 28th October, 2022

S.O. 1318.—In supersession of this Ministry's Notification No.M-11019/3/2018-DO(FC) dated 05.10.2018 and No.M-11019/4/2020-DO(FC) dated 13.10.2020 in respect of Central Board of Film Certification, Cuttack and in exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Cuttack with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Sh. Shri Bhubananda Tripathy
2. Dr. Rabindra Narayan Behera
3. Shri Rabindranath Sar
4. Shri Shiva Narayan Singh
5. Shri Srikanta Das
6. Shri Lalatendu Badu
7. Shri Sanjeeb Kumar Mishra
8. Shri Kananbala Pattanaik
9. Shri Nitai Charan Nanda
10. Smt. Rashmi Rekha Das
11. Smt. Kalpana Pattanaik
12. Smt. Archana Priyadarsani Palai
13. Shri Niranjana Mishra
14. Dr. Rajeshwari Paikaray
15. Shri Jatindra Nayak
16. Smt. Sangita Dash
17. Dr. Suniti Mund
18. Shri Madan Mohan Pradhan
19. Shri Akhila Pattanaik
20. Smt. Sangita Majhi
21. Smt. Bandana Kunungo
22. Smt. Manasmita Khuntia
23. Shri Hitesh Mohapatra
24. Smt. Ambika Prasad Panda

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

नई दिल्ली, 28 अक्टूबर, 2022

का.आ. 1319.—केंद्र सरकार, केंद्रीय फिल्म प्रमाणन बोर्ड, हैदराबाद के संबंध में इस मंत्रालय की दिनांक 05.10.2018 की अधिसूचना संख्या एम-11019/3/2018-डीओ (एफसी) तथा दिनांक 13.10.2020 की अधिसूचना संख्या एम-11019/4/2020-डीओ (एफसी) का अधिक्रमण करते हुए और चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित, चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित व्यक्तियों को केंद्रीय फिल्म प्रमाणन बोर्ड, हैदराबाद के सलाहकार पैनल के सदस्यों के रूप में तत्काल प्रभाव से दो साल की अवधि या अगले आदेश तक, जो भी पहले हो, के लिए नियुक्त करती है:

1. श्रीमती चेन्नामनेनी श्रवन्थि
2. श्री उपेंद्र रेड्डी कोट्टम
3. श्रीमती एम. अपर्णा गौड़
4. श्री ई. श्रीनिवास

5. श्रीमती सुधा वीरदेशवथुला
6. श्री बोद्धुपल्ली श्रीनिवास
7. श्री बी. राजशेखर रेड्डी
8. श्री गुंडेती रमेश
9. श्रीमती वी. जयश्री
10. डॉ. दारुवु येलान्ना
11. श्री पी. रमेश
12. श्री आर. श्रीधर
13. श्रीमती नुकाला पद्मा रेड्डी
14. श्री डी. मल्लेश
15. श्री सोमा नरसिम्हा
16. श्री अनुगु सुधाकर रेड्डी
17. श्री चक्रवरथुला वेणुगोपाल
18. डॉ. बी सुनीता राममोहन रेड्डी
19. श्री कौमदी महिपाल रेड्डी
20. श्रीमती वेलुगापुनि सरिता राव
21. श्री ए नागेश्वर राव
22. श्री मती मारू रामा
23. श्रीमती जी प्रसन्ना
24. श्री न्यालकोंडा प्रसन्ना रेड्डी
25. श्री बोगा विजयभास्कर
26. श्री एन. वेंकट नवीन
27. श्रीमती नीरादि हिमावती
28. श्री कृष्ण आदिशेषु
29. श्री उपेंद्र गुप्ता
30. श्रीमती स्वेता गोविंदाराजुलू
31. श्री वेंकट किशोर बी
32. श्री लोहित कुमार ए
33. श्री श्रीनिवास बेजुगुम
34. श्री श्रीधर चाणुक्य वेमुरी
35. श्रीमती वामशी कृष्णा ए
36. डॉ. शिवाजी वाडरेवु
37. श्री श्रीनिवास रेड्डी चौधरी
38. श्रीमती लक्ष्मी शिव नारायण वासिरेड्डी
39. श्रीमती स्वतंत्र भारती वर्धिनीदी
40. श्रीमती मैथिली एपी
41. श्री मंगा जी
42. श्रीमती लक्ष्मी अन्नपूर्णा
43. श्रीमती अनुषा टी

44. डॉ. किरणमयी बोनाला
45. श्रीमती दीप्ति वाजपेयी
46. श्री पवन कुमार चेंगोम्मा
47. श्री किशोर तिरुमला

[फा. सं. एम-11019/3/2021-डीओ(एफसी)]

मो. जाहिद शरीफ, अवर सचिव

New Delhi, the 28th October, 2022

S.O. 1319.—In supersession of this Ministry's Notification No.M-11019/3/2018-DO(FC) dated 05.10.2018 and No.M-11019/4/2020-DO(FC) dated 13.10.2020 in respect of Central Board of Film Certification, Hyderabad and in exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint the following persons as members of the Advisory Panel of the Central Board of Film Certification, Hyderabad with immediate effect for a period of two years or until further orders, whichever is earlier:

1. Smt. Chennamaneni Sravanthi
2. Shri Upender Reddy Kottam
3. Smt. M. Aparna Goud
4. Shri E. Srinivas
5. Smt. Sudha Veeradeshabathula
6. Shri Boddupalli Srinivas
7. Shri B. Rajashekar Reddy
8. Shri Gundeti Ramesh
9. Smt. V. Jayasree
10. Dr. Daruvu Yellanna
11. Shri P. Ramesh
12. Shri R. Sridhar
13. Smt. Nookala Padma Reddy
14. Shri D. Mallesh
15. Shri Soma Narsimha
16. Shri Anugu Sudhakar Reddy
17. Shri Chakravarthula Venugopal
18. Dr. B. Sunitha Rammohan Reddy
19. Shri Kommidi Mahipal Reddy
20. Smt. Velugapuni Saritha Rao
21. Shri A. Nageshwar Rao
22. Smt. Maru Rama
23. Smt. G. Prasanna
24. Shri Nyalakonda Prasanna Reddy
25. Shri Boga Vijayabhaskar
26. Shri N. Venkata Naveen
27. Smt. Neeradi Hymavathi
28. Shri Krishna Adishesu
29. Shri Upender Gupta
30. Smt. Swetha Govindarajulu
31. Shri Venkata Kishore. B
32. Shri Lohith Kumar. A

33. Shri Srinivas Bejugum
34. Shri Sridhar Chanukya Vemuri
35. Smt. Vamshee Krishna. A
36. Dr. Sivaji Vadrevu
37. Shri Srinivas Reddy. CH
38. Smt. Laxmi Siva Narayana Vasireddy
39. Smt. Swanthantra Bharathi Vardhineedi
40. Smt. Mythili. A.P.
41. Shri Manga. G
42. Smt. Laxmi Annapurna
43. Smt. Anusha. T
44. Dr. Kiranmai Bonala
45. Smt. Deepthi Vajpeye
46. Shri Pawan Kumar Chegomma
47. Shri Kishore Tirmuala

[F. No. M-11019/3/2021-DO(FC)]

Md. ZAHID SHARIF, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 14 नवम्बर, 2022

का.आ. 1320.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उप मंडल अधिकारी (टेलीग्राफ), बीएसएनएल, टेलीफोन एक्सचेंज, एनआर, पालनपुर (बीके); मुख्य महाप्रबंधक, दूरसंचार विभाग, भारत संचार निगम लिमिटेड, खानपुर, अहमदाबाद (गुजरात); महाप्रबंधक, दूरसंचार जिला, दूरसंचार विभाग, पालनपुर, पालनपुर (बी.के.), के प्रबंधन के संबंध में नियोजकों और महासचिव, एसोसिएशन ऑफ रेलवे एंड पोस्ट एम्प्लाइज, वस्त्रापुर, अहमदाबाद (गुजरात), के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय- अहमदाबाद के पंचाट (संदर्भ सं. 557/2004) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14/11/2022 को प्राप्त हुआ था।

[सं. एल-40012/15/2003- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th November, 2022

S.O. 1320.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 557/2004) of the Central Government Industrial Tribunal cum Labour Court - Ahmedabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Sub Divisional Officer (Telegraph), BSNL, Telephone Exchange, Palanpur (B.K.); The Chief General Manager, Telecom Deptt., Bharat Sanchar Nigam Ltd., Khanpur, Ahmedabad (Gujarat); The General Manager, Telecom Distt. Telecom Deptt., Palanpur, Palanpur (B.K.), and The General Secretary, Association of Railway and Post Employees, Vastrapur, Ahmedabad (Gujarat), which was received along with soft copy of the award by the Central Government on 14/11/2022.

[No. L- 40012/15/2003- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT,
AHMEDABAD**

Present: SUNIL KUMAR SINGH-I, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated : 29.11.2022

Reference: (CGITA) No- 557/2004

1. The Sub Divisional Officer (Telegraph),
BSNL, Telephone Exchange, Nr. Bus Stand,
Palanpur (B.K.) – 385001
2. The Chief General Manager,
Telecom Deptt., Bharat Sanchar Nigam Ltd., Khanpur,
Ahmedabad (Gujarat) – 380001
3. The General Manager, Telecom Distt.,
Telecom Deptt., Palanpur Telecom District, Joravar Palace,
Palanpur (B.K.) – 385001

...First Parties

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Nr. Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) – 380007

...Second Party

For the First Party : Shri N.K. Trivedi
For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/15/2003-IR(DU) dated 06.05.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Association of Railway & Post Employees, Ahmedabad for reinstatement of Sh. Nenaji Hiraji Thakor, casual Labour by the management of Telecom District Manager, Palanpur/SDOT, Palanpur, BSNL (Telecom Deptt.) is proper and justified? If no, to what relief the concern workman is entitled for and since when?”

1. The reference dates back to 06.05.2003. The second party submitted the statement of claim Ex. 7 on 05.04.2005 and the first party submitted the written statement Ex. 8 on 26.06.2007. The second party also submitted the copy of the documents vide list Ex. 10 on 25.01.2017. Since then the second party has not been leading evidence despite giving several opportunities.

2. Today on 29.11.2022, Shri Chintan Gohel Advocate for the second party is present and submitted an application vide Ex.12 that the second party has not been in his contact and orally stated that tribunal may pass order as it deem fit.

3. Thus, in the light of the aforesaid circumstances, the reference is finally disposed of in the absence of the second party with the observation as under: “the demand of the Association of Railway & Post Employees, Ahmedabad for reinstatement of Sh. Nenaji Hiraji Thakor, casual Labour by the management of Telecom District Manager, Palanpur/SDOT, Palanpur, BSNL (Telecom Deptt.) is neither proper nor justified.”

4. Let two copies of the Award be sent to the Appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2022

का.आ. 1321.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ पोस्ट मास्टर जनरल, डी/ओ पोस्ट, गुजरात सर्किल, खानपुर, अहमदाबाद; उप-रिकॉर्ड अधिकारी, आरएमएस, एएम डिवीजन, मेहसाणा, (गुजरात), के प्रबंधन के संबद्ध नियोजकों और महासचिव, एसोसिएशन ऑफ रेलवे एंड पोस्ट एम्प्लाइज, वास्त्रापुर, अहमदाबाद (गुजरात), के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- अहमदाबाद पंचाट(संदर्भ संख्या 57/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14/11/2022 को प्राप्त हुआ था।

[सं. एल-40012/16/2009-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th November, 2022

S.O. 1321.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/2011) of the Central Government Industrial Tribunal cum Labour Court - Ahmedabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Post Master General, D/o Post, Gujarat Circle, Khanpur, Ahmedabad; The Sub-Record Officer, RMS, AM Division, Mehsana (Gujarat), and The General Secretary, Association of Railway and Post Employees, Vastrapur, Ahmedabad (Gujarat), which was received along with soft copy of the award by the Central Government on 14/11/2022.

[No. L-40012/16/2009-IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, AHMEDABAD**

Present : Sunil Kumar Singh-I, Presiding Officer, CGIT cum Labour Court, Ahmedabad,

Dated 30th November, 2022**Reference (CGITA) No. : 57/2011**

1. The Chief Post Master General,
D/o Post, Gujarat Circle, Khanpur,
Ahmedabad - 380001
2. The Sub-Record Officer,
RMS, AM Division,
Mehsana (Gujarat)

... First Party / Employer

V

The General Secretary,
Association of Railway and Post Employees,
4, Duplex Apartment, Nehrupark, Vastrapur,
Ahmedabad - 380007

(For the workman Shri Nareshkumar Manilal Parmar)

....Second Party / Union / Workman

Advocate for the First Party / Employer : Shri Kishan B. Chandel
Advocate for the Second Party / Workman : Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/16/2009-IR(DU) dated 11.07.2011 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE**“Whether the action of the management of Chief Post Master General, Ahmedabad, in terminating the services of Shri Nareshkumar Manilal Parmar w.e.f. 20.07.1998 is legal and justified? What relief the workman is entitled to?”**

1. The reference dates back to 11.07.2011. In the background of this reference, it is pertinent to mention that, after considering the said dispute, the Central Government, Ministry of Labour & Employment, New Delhi, declined adjudication on 05.05.2009. However, in compliance of order dated unknown passed by Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No. 4864 of 2011, the Central Government, vide order dated 11.07.2011, referred dispute to this Tribunal for adjudication which was received on 25.07.2011. My predecessor passed an award dated 29.04.2019 on merit with a finding that the second party / workman did not deserve any relief. The second party / workman filed R/Special Civil Application No. 2979 of 2020 against the impugned award dated 29.04.2019. Hon'ble High Court of Gujarat, vide order dated 23.06.2022, set aside the award with the observation that the impugned award is sans reasons and the case was remanded with a direction to pass award afresh on merit after rehearing the parties, hence the present award.

2. In response to the notice issued to the parties, the second party / workman submitted the statement of claim dated 25.09.2012 alleging that he was appointed by the first party The Chief Post Master General, D/o Post, Gujarat Circle, Khanpur, Ahmedabad and The Sub-Record Officer, RMS, AM Division, Mehsana, hereinafter referred to as 'first party' on 27.05.1996 after inviting the names from employment exchange Mehsana and inviting for interview vide letter dated 13.05.1996. Since 13.05.1996, he worked satisfactorily till 20.07.1998, the date on which his services were terminated without following the due procedure of law i.e. without giving notice and notice pay. He has also alleged that after his termination, some other persons were appointed. The first party has also adopted exploitative tactics to engage temporary staff continuously. The first party is in the habit of engaging the workmen temporarily to deprive them the benefits of uniform, provident fund, gratuity, bonus etc. He moved number of representations for re-employment but for no avail. The second party / workman has prayed for reinstatement of service with back wages along with all consequential benefits.

3. The first party / employer, submitted written statement dated 26.11.2012, stating that the workman's submissions are totally false and no departmental procedure and recruitment formalities were carried out against any post for the applicant. It is stated that his name was sponsored by the Employment Exchange at Sl. No. 27/40, vide letter no. CGN/104/96/907 dated 04.05.1996 in response to filling up the post of part time Water Carrier cum Sweeper. He was called upon only to contact with SRO, Mehsana on 21.05.1996, vide SRO, Mehsana's letter dated 13.05.1996. After completing the recruitment process, the names of the selected candidates were intimated to Employment Exchange by SRO, Mehsana vide letter dated 08.04.1997. The applicant was neither selected nor appointed by SRO, Mehsana against the post for which his name was sponsored by the Employment Exchange. It is further stated that since no appointment order in favour of the applicant was issued, the question of said termination dated 20.07.1998 does not arise. The applicant has accordingly not served even for a day, hence prayed to reject the said claim.

4. The second party / workman has, through list Ex. 10, filed copy of initial complaint dated 24.06.2008, letter by workman to Assistant Labour Commissioner (C), Ahmedabad dated 15.07.2008 (Ex. 11), letter of management dated 13.05.1996 (Ex. 12), letter dated 27.05.1996 (Ex. 13), letter dated nil issued by District Employment Officer, Mehsana (Ex. 14), applications dated 01.02.2007 and 21.06.2001 sent by workman to management, copy of appeal memo dated 05.04.2004 preferred by workman to management, workman's applications dated 21.06.2004 & 20.08.2001 addressed to 'President of India' and 'management' respectively, management's letters to workman dated 25.07.2001 (Ex. 15) & letter dated 10.06.2004 (Ex. 16), workman's letter dated 02.06.2009 along with acknowledgement addressed to management, workman's application to Assistant Labour Commissioner (C), Ahmedabad dated 05.01.2009 (Ex. 17), workman's letter dated 12.01.2007 addressed to management and management's letters dated 21.07.2004 (Ex. 18), 12.04.2004 (Ex. 19) & 25.06.2004 (Ex. 20). The second party / workman has orally deposed himself at Ex. 21.

5. The first party / employer has not filed any documentary evidence, however Shri Hardik B. Gadhavi, Assistant Superintendent (H.Q.), Ahmedabad has been orally examined.

6. I have gone through the material on record and heard Ld. Counsels for both the parties.

7. At the very outset, it is pertinent to mention that the workman moved an application dated 24.12.2013 (Ex. 8) requesting for the production of muster roll, seniority list and names of fresh persons recruited after his termination on the ground, almost similar to those taken in his statement of claim. The first party / employer also filed its reply in the form of affidavit dated 10.12.2014 (Ex. 9), stating that, as the workman was neither appointed nor worked in the department, hence there was no occasion in respect of maintaining the said records.

8. After perusal of order sheets, it transpired that no order has yet been passed on Ex. 8 till date. As the Ld. Counsels for both the parties argued their parts and entire evidence has been adduced in the case, hence the order on aforesaid application (Ex. 8) deserves to be passed at this stage. The second party / workman has

himself stated in his statement of claim that the department is neither maintaining attendance register, wage register nor issuing identity card, presence card and wage slip related to temporary staff. The workman, in his cross-examination at Ex. 21, has further admitted that he did not qualify in the examination of postal department. This statement of workman substantiates the stand taken by the first party / employer, whose witness Shri Hardik B. Gadhavi has stated in his cross-examination, conducted at Ex. 22, that no record is available in office regarding this workman. Hence, in the circumstances, the prayer of workman at Ex. 8 for production of said documents cannot be accepted, hence declined.

9. The following points are now framed for the determination of this dispute:

1. **Point of determination no. 1:** Whether the relationship of employer and employee exists between the parties? If yes, whether the workman has worked for 240 days during the calendar year preceding the said termination order dated 20.07.1998 and whether the employer, at the time of said termination, engaged juniors by not giving preference to the second party / workman?
2. **Point of determination no. 2:** Whether the second party / workman is entitled for any relief?

10. **The determination of point no. 1 :** - The burden to prove this point lies on the workman. The claim of the workman is that his name was sponsored by the Employment Exchange office, Mehsana Division and he was called for interview by first party / employer on 13.05.1996 and was appointed in the department w.e.f. 27.05.1996. However, he claims to be working with the department since 13.05.1996 without any explanation as to whether he was already working with the department before the said date of his appointment on 27.05.1996. This factual matrix in the statement of claim does not appeal to reason as to how a person appointed on 27.05.1996 can be believed to have been working since 13.05.1996. Admittedly, the workman has neither filed copy of the said appointment letter nor copy of the said termination order; rather the workman, in his cross-examination at Ex. 21 stated that he was retrenched when the permanent workman joined in his place. Even if for a moment, this statement of workman is accepted to be true (which is not his case), then even if he was working as a temporary staff, he had to go after the appointment of a regular staff on the said post. The second party / workman has himself admitted in his cross-examination that he did not qualify in the examination of Postal Department. This statement of workman falsifies his own case, claiming to be an employee appointed through the examination conducted by the department.

11. The first party / department is a Central Government department and it is not the case of the said workman that any of the officers of first party / department was biased with him in any manner. The first party / department has replied that the names of the selected candidates were intimated to Employment Exchange, Mehsana by the department / first party no. 2 vide letter no. 55 dated 08.04.1997.

12. As far as aforesaid documents filed by workman is concerned, they all relate to the prayer for seeking employment before first party / employer at various forums.

13. Ld. Counsel for second party / workman has argued that the first party / department, vide letter dated 13.05.1996, informed the second party / workman to report and contact on 21.05.1996 at 12:00 Noon before Sub-Record Officer, RMS, Mehsana but the first party / employer has not explained as to why he was called on 21.05.1996 and argued that this letter be treated that the workman was called for the said job of Water Carrier cum Sweeper. He has further argued that an adverse inference be drawn against the first party / employer for not producing the relevant documents like muster roll, wage register and seniority list. He has cited following case law in support of his argument:

- i. Gopal Krishnaji Ketkar V Mohomed Haji Latif & ors., AIR 1968 SC 1413
- ii. Shivam Construction Co. and ors. V Vijaya Bank, Ahmedabad and ors., AIR 1997 Guj. 24
- iii. M/s Sriram Industrial Enterprise Ltd. V Mahak Singh & ors., 2007 SCC 94
- iv. National Insurance Company Ltd., New Delhi V Jugal Kishore & ors., AIR 1988 SC 719
- v. Superintendent Engineer V R. Chhanabhai Nathabhai, Order dated 04.03.2005 in Letters Patent Appeal No. 202 of 2005 in Special Civil Application No. 6697 of 2001 to Letters Patent Appeal No. 221 of 2005 with Civil Application No. 1212 to 1231 of 2005
- vi. R. M. Yellatti V Assistant Executive Engineer, 2006 (1) SCALE 139 SC

Hon'ble Supreme Court and Hon'ble High Court of Gujarat in afore-cited rulings have held that even if the burden of proof does not lie on a party, the court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts and issues.

14. Ld. Counsel for first party has argued that the first party is a Department under Central Government and has categorically denied the claim of workman to have ever been appointed as a peon, must be believed as the workman has not discharged his burden to prove his claim.

15. In view of the arguments advanced by the second party / workman, I have examined the said letter dated 13.05.1996 (Ex. 12) written by first party / department in 'Gujarati' language and addressed to the workman. The content of this letter merely speaks in respect of the workman to contact on 21.05.1996. It further speaks only to contact in the Department during the said selection process for the said post sponsored by local Employment Exchange. The content of this letter goes to show that the management intended to inform the workman that his name has been sponsored by 'Employment Exchange'. This call letter (Ex. 12) cannot be made basis to believe that the workman was asked to join.

16. The witness of first party / employer, Shri Hardik B. Gadhavi, who was cross-examined at Ex. 22, has, in the second line of his cross-examination, categorically stated that the workman never served / worked under him. However, the next sentence reads "he was engaged after calling name from Employment Exchange". He, as per this sentence, if read with entire statement of witness, has never intended to say that the workman was engaged by the Department. In his subsequent statement, the witness has explained that his name was called from Employment Exchange for doing the job of Water Carrier cum Sweeper but he was not selected for job and also was not permitted to join. He further clarified that he (workman) was never engaged for the said job so non-mentioning of "not" after "was" in the third line from the start point of cross-examination, is either a slip of tongue or a clerical omission and deserves to be ignored. Para 4 of the written statement also has such omission which also deserves to be ignored in the totality of facts stated in the written statement and the entire deposition of the only witness of the first party.

17. The claim of the workman is not substantiated by the evidence on record. In view of aforesaid discussion, it cannot be said that the first party / employer ever withheld any document in his possession. The facts of afore-cited case law are easily distinguishable and not applicable to the fact of the case in hand.

18. On the basis of aforesaid reasons, it is concluded that there does not exist relationship of employer and employee between the parties, hence, the second party cannot be equated as 'workman' as defined under Section 2 (j) of Industrial Disputes Act, 1947.

19. The workman has not named the junior persons in the statement of his claim who were allowed to continue service. However the names of Shri B. M. Makwana, Shri P.N. Nachankar and Shri A.C. Thakore were handwritten at Page 12 of typed written affidavit dated 19.04.2017 (Ex. 21) submitted by the workman in his examination-in-chief only after the names were mentioned by first party in its reply / affidavit dated 25.08.2014 (Ex. 9) filed against the second party's application (Ex. 8) for the production of document. In Ram Gopal Saini V The Judge, Labour Court No. 2, Jaipur and ors., 2001 LLR 747 (Raj.), Hon'ble Rajasthan High Court has held that the workman cannot succeed merely by mentioning the names of junior persons. He has to prove that he worked for 240 days in the calendar year preceding the said termination order dated 20.07.1998. This fact is essentially to be proved by the evidence. In view of this dictum, the applicant / employee has failed to prove aforesaid facts. This apart, the second party / employee is not entitled to any benefit under Section 25 (F), 25 (G) or 25 (H) of Industrial Disputes Act, 1947 as the relationship of employer and employee has not been proved as discussed above. The first point is accordingly decided against the applicant / said employee.

20. **The determination of point no. 2 :** - This point relates to the relief. For the reasons recorded above, the claim of second party / applicant does not stand. Hence point no. 2 is decided against the workman. The reference is answered in negative. The applicant / employee is not entitled to any relief.

21. The claim of the applicant / employee is rejected and the award is passed accordingly.

Let two copies of the Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2022

का.आ. 1322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य अभियंता (पश्चिम क्षेत्र), आकाशवाणी और दूरदर्शन, मुंबई; अधीक्षक इंजीनियर, आकाशवाणी, भारत सरकार, राजकोट (गुजरात), के प्रबंधतंत्र के संबद्ध नियोजकों और अध्यक्ष, सौराष्ट्र कर्मचारी

संघ, राजकोट (गुजरात), के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय- अहमदाबाद के पंचाट (संदर्भ सं. 1000/2004) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14/11/2022 को प्राप्त हुआ था।

[सं. एल-42012/107/95- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th November, 2022

S.O. 1322.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1000/2004) of the Central Government Industrial Tribunal cum Labour Court - Ahmedabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Engineer (West Zone), AIR & Doordarshan, Mumbai; The Supdt. Engineer, AIR, Government of India, Rajkot (Gujarat), and The President, Saurashtra Employees Union, Rajkot (Gujarat), which was received along with soft copy of the award by the Central Government on 14/11/2022.

[No. L-42012/107/95- IR (DU)]

D.K. HIMANSHU, Under Secy.

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present: SUNIL KUMAR SINGH-I, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated 18th November, 2022

Reference (CGITA) No.: 1000/2004

(Old Reference (ITC) No.: 03/1996)

1. The Chief Engineer (West Zone),
AIR & Doordarshan, 101 M.K Road, Old CGO Building,
Bombay (Now Mumbai) - 400020
2. The Supdt. Engineer,
AIR, Government of India, Opp. Race course,
Rajkot (Gujarat)

... Employer / First Party

V

The President,
Saurashtra Employees Union, Umesh Commercial Complex,
R. N. No. 213 & 214, 2nd Floor, Near Chaudhary High School,
Rajkot (Gujarat)
(For the workman Shri Nitinkumar R. Begtharia,
Engineering Assistant with first party no. 2)

...Second Party Union / Workman

Advocate for the Employer / First Party: Shri Harsheel D. Shukla

Advocate for the Second Party union / workman: Shri Abhisht K. Thaker,

Shri M.G. Gopalani &

Shri Karan Vakil

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/107/95-IR(DU) dated 27.12.1995 referred the dispute for adjudication to the Industrial Tribunal, Rajkot in respect of the matter specified in the Schedule. The dispute was received in Central Government Industrial Tribunal cum Labour Court, Ahmedabad on its creation at Ahmedabad.

SCHEDULE

“Whether the action of the Supdt. Engineer, All India Radio, Rajkot in terminating the services of Sh. Nitinkumar R. Begtharia, Engineering Assistant after having worked from March 90 to 28th November 1991, w.e.f. 28th November 1991 by giving reason that he was appointed on one of the reserved vacancy of Scheduled Tribe Community, valid just and legal? If not, to what benefits the workman is entitled and what directions are necessary in the matter?”

1. The reference is critically old one and dates back to the year 1995. At the very outset, it is pertinent to mention that my predecessor passed an award dated 13.02.2006 (Ex. 41) on merit rejecting the claim of second party / workman and upheld the impugned termination order of employer / first party as valid, just and legal. A writ Petition/Special Civil Application No. 19335 of 2007 was filed by the aggrieved workman against the impugned award before the Hon'ble High Court of Gujarat at Ahmedabad. Hon'ble Gujarat High Court, vide order dated 27.04.2016 quashed and set aside the award dated 13.02.2006 and the case was remanded to this Tribunal for deciding afresh on merit with a direction to provide opportunity to both the parties, within a period of one and half year from the date of receipt of the order. The matter was placed before me for the very first time on 18.10.2022 after taking over the charge of this Tribunal on 23.08.2022.

2. Consequent upon the service of notice, statement of claim dated 11.01.1996 (Ex. 2) was filed by the applicant / workman in his personal capacity stating therein that he applied for the post of 'Engineering Assistant' for 'All India Radio' (Western Zone) in accordance with an advertisement published in employment news paper published by Central Employment Exchange, New Delhi dated 20.05.1989. After taking up written test and interview, he was selected for the said post and was posted under respondent no. 2 / All India Radio, Rajkot, vide his office order no. RAJ-1(1)90-S dated 15.03.1990. He underwent a course for Engineering Assistant from 06.05.1991 to 31.05.1991 and passed the course successfully. Suddenly, respondent no. 2, vide memo no. RAJ-21(NRB/91-S) dated 26.11.1991 asked the second party / workman to produce the certificate of schedule tribe category, hereinafter referred to as, 'ST' though the applicant was selected and appointed against the vacancy in general category. Accordingly, the applicant produced all required certificates to respondent no. 2, which were already submitted at the time of interview and appointment. Respondent no. 2, without considering facts stated by the applicant, terminated the services of the applicant w.e.f. 28.11.1991 vide order no. RAJ-21(NRB)/91-S dated 27.11.1991 which is unjust, arbitrary and illegal. The second party / workman raised an Industrial Dispute before the Assistant Labour Commissioner (Central), Adipur on 16.01.1992 who vide letter no. ALC/ADPR/95(1)/94 dated 28.03.1994 informed that he has no jurisdiction to intervene in the matter stating therein that applicant is a Government employee. The applicant / workman has further stated that neither any enquiry has been conducted nor sufficient opportunity of hearing was provided to him, hence, the termination order has been passed in violation of the principles of natural justice and also against Article 311 (2) of Constitution of India. He has also stated that the impugned order is also against Section 25 (F) and 25 (G) of Industrial Disputes Act, 1947 as the prescribed procedure has not been followed. He has further stated that his ACRs were prepared in respect of general category post. He also submitted a certificate of his backward class category. There was no mention of category in the appointment letter. Prayed to quash the impugned order and place the workman in service with full back wages.

3. The employer filed written statement (Ex. 20) through Sushree Asha Shukla, Station Director, working with first party no. 2, stating the claim of applicant being misconceived and untenable. It is further stated that the second party / workman Nitinkumar R. Begtharia appeared in the written test and declared his caste as 'ST' on the 'answer sheet'. No interview for the post was conducted. In written test, he scored 26 marks and did not qualify for selection under general category. Only those general category candidates were offered appointment who secured 58 marks. The applicant was selected as 'ST' candidate as the qualifying marks were relaxed to 21 % for 'ST' candidates. It is further stated that the applicant declared himself to be a member of 'ST' category in the 'attestation form'. There was a clear warning on the attestation form that in furnishing false information and suppression of any factual information would be a disqualification and likely to render the candidate unfit for employment. The applicant was given an offer of appointment dated 15.03.1990 under 'ST' category by the answering employer and the applicant joined service on 23.03.1990. During completing the service records, it was noticed that the applicant had declared in the 'attestation form' that he is a member of 'ST' but not submitted any proof in the prescribed form. On reference, the recruiting authority, vide letter no. A-12919/1/91-SIII/CEW dated 22.11.1991 confirmed that the applicant was selected for the said post in 'ST' category and his case cannot be considered in any other category. Vide answering employer's office memo no. RAJ-21(NRB)91-S dated 26.11.1991, the applicant / workman was afforded an opportunity to submit proof of being member of 'ST'. In response thereof, the applicant submitted that he does not belong to 'ST' category which proved that the declaration made by the applicant in 'answer sheet' and 'attestation form' was wrong and false. Accordingly, the services of applicant were terminated w.e.f. 28.11.1991 vide order no. RAJ-21(NRB)91-S dated 27.11.1991. The applicant mis-represented his caste to obtain employment through unfair means and deprived one 'ST' candidate from the employment. It is further stated that since the applicant had not completed

the probation period of two years, hence, neither any notice was required to be given nor any enquiry was necessary. It is further stated that as a practice, the category in the appointment order is not mentioned, thus the applicant is not entitled for any relief and prayed to reject the claim of applicant.

4. The applicant / workman has filed, through list Exh. 5, photocopies of advertisement dated 20.05.1989 as mark 1, offer of appointment dated 15.03.1990, employer's letter dated 04.05.1989 and letter dated 31.07.1989 addressed to applicant for submission of application to registered employment exchange and to carry out documentation respectively, all three papers as mark 2, letter (memo) dated 26.11.1991 issued by respondent no. 2 and unsigned carbon copy of reply dated 27.11.1991 submitted by applicant workman as mark 3, letter dated 28.03.1994 issued by Assistant Labour Commissioner (Central), Adipur Kutch as mark 4. The applicant / workman has examined himself orally at Ex.15 and narrated his claim in brief.

5. The employer / first party has filed through list Ex. 21, photocopies of 'attestation form' dated 07.08.1989 as annexure R1, letter dated 14.11.1991 submitted by employer / first party no. 2 to first party no. 1 for verification of category of the applicant as annexure R2, letter dated 22.11.1991 sent on behalf of first party no. 1 to employer / first party no. 2 seeking action against the applicant for mis-representation of his caste as annexure R3, photocopy of the office memo issued by employer / first party no. 2 to the applicant seeking his clarification as to whether he belongs to 'ST' community and to produce certificate thereof as annexure R4, applicant's explanation dated 27.11.1991 addressed to employer / first party no. 2 informing that he does not belong to 'ST' category but to socially and educationally backward category and the order of termination dated 27.11.1991 passed over it as annexure R5 and advertisement published in 'Central Employment Exchange' dated 20.05.1989. The employer / first party has, through list Ex. 33, again filed photocopies of 'attestation form' along with photocopies of merit list of said 'Engineering Assistant' examination of 'ST' category. Shri Bachubhai, who is an 'Administrative Officer' in the office of first party no. 2, has been orally examined vide Ex. 32. This witness, as secondary evidence, has repeated the contents of written statement submitted by the employer / first party no. 2.

6. Perused records and heard Ld. Counsels for both the parties in respect of their detailed written arguments.

7. The following points are framed for the determination of the dispute in hand:

Point No. 1: Whether the applicant / employee Shri Nitinkumar R. Begtharia is a 'workman' as defined under the Industrial Disputes Act, 1947?

Point No. 2: Whether the termination order dated 27.11.1991 is valid, just and legal? If not, to what relief, the applicant is entitled to?

8. **Determination of Point No. 1:** The applicant / workman claims himself to be a workman under the Industrial Disputes Act, 1947, however, Ld. Counsel for the employer has submitted that during his cross-examination at Ex. 15, the workman has stated that he is not a 'workman' under Industrial Disputes Act, 1947, hence the Tribunal lacks jurisdiction.

The definition of 'workman' as defined under Section 2 (s) and the definition of 'Industry' as defined under Section 2 (j) of the Industrial Disputes Act, 1947 read as under:

“(s) “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)

(ii)

(iii)

(iv)

“(j) “Industry” means any business, trade, undertaking, manufacture, or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen”.

9. Now, it has to be seen as to whether the applicant's employer 'All India Radio' is an 'Industry'. Ld. Counsel for the employer / department has cited Gujarat Urja Vikas Nigam Ltd. (erstwhile Gujarat Electricity) V Geb Engineers' Association (Gtd), 2016 (O) AIJEL-HC 235704. In the facts of relevant case, the petitioner was engaged as Deputy Engineer in the pay of more than Rs.1600/- per month who was not treated to be a workman within the meaning of Section 2 (s). In the present case in hand, the applicant /

workman is said to have been appointed as Engineering Assistant. According to photocopy of offer of appointment as mark 2 and filed with Ex. 5, the pay of applicant is shown as Rs.1400/- per month which is much less than Rs.1600/- before the year 2010 amendment in Section 2 (s) IV of Industrial Disputes Act, 1947. Hence the fact of the case in hand can be easily distinguished from the facts of the afore-cited law. Hon'ble Supreme Court in All India Radio V Santosh Kumar, AIR (1998) SC 941, after referring General Manager, Telecom V A. Srinivasa Rao, (1997) 8 SCC 767 (3 judges bench), held that ratio of seven judges constitution bench in Bangalore Water Supply & Sewerage Board V A. Rajapappa, AIR (1978) SC 548, hold the field and held that 'All India Radio' and 'Doordarshan' are 'Industries' within the meaning of Section 2(j) of Industrial Disputes Act, 1947.

10. I have also gone through the cross-examination of applicant employee at Ex. 15. He has categorically answered in 'Gujarati' to the suggestion of employer / first party's Ld. counsel whose 'English' translation is as under "**It is not true that I am not included in the definition of workman.**" This makes clear that the workman never intended to state that he was not covered in the definition of 'workman'. In view of aforesaid authoritative pronouncements, the employer / first party 'All India Radio' is an 'Industry' within the meaning of Section 2(j) of Industrial Disputes Act, 1947. Hence the applicant is covered under the definition of 'workman' under Section 2 (s) of Industrial Disputes Act, 1947. This point is accordingly decided in favour of applicant / workman.

11. **Determination of Point no. 2:** It is to be determined in this point of dispute that whether the termination order dated 27.11.1991 passed on behalf of employer / first party no. 2 is valid, just and legal?

The main contention of the applicant / workman's Ld. Counsel is that the workman was appointed in the 'general category' and not in the 'ST' category. It has further contended that before termination, neither any notice to show cause was served upon him nor any enquiry was conducted before imposing such a major penalty. The order of 'termination' has been passed in gross violation of the principles of natural justice as no opportunity of hearing was afforded to him. The applicant's Ld. Counsel has cited following judicial pronouncements in support of his arguments:

- i. State of Haryana and anr. V Jagdish Chander, AIR 1995 SC 984
- ii. Radhey Shyam Gupta V U.P. State Agro Industries Corporation Ltd. & anr., AIR 1999 SC 609
- iii. Managing Director, ECIL, Hyderabad, etc. etc. V Karunakar etc. etc., AIR 1994 SC 1074
- iv. Avtar Singh, Police Constable V The Inspector General of Police, Punjab, (1968) SLR 131
- v. State of Gujarat V R.G. Teredesai and anr., (1970) 1 SCR 251
- vi. General Manager, Eastern Railway and anr. V Jawala Prasad Singh, (1970) II LLJ 279 SC
- vii. Uttar Pradesh Government V Sabir Hussain, (1975) Supp. SCR 354
- viii. Union of India and anr. V Tulsiram Patel and anr., (1985) Supp. 2 SCR 131
- ix. Secretary, Central Board of Excise and Customs and ors. V K.S. Mahalingam, (1986) 3 SCR 35
- x. Ram Chander V Union of India and ors. (1986) 3 SCR 103
- xi. Union of India and anr. V E. Bashyan, (1988) 3 SCC 209
- xii. Dipti Prakash Banerjee V Satvender Nath Bose, National Centre of Basis Sciences, Calcutta and ors., AIR 1999 SC 983
- xiii. Shri D.K. Yadav V M/s J.M.A. Industries Ltd. 1993 (4) SLR 126 SC
- xiv. Awadh Bihari I. Shah V Union of India and ors. (photocopy of order dated 13.01.1993 passed by C.A.T., Ahmedabad Bench in O.A. No. 120 of 1991)

12. In the afore-cited judicial precedents, it has been generally held that the principles of natural justice require that opportunity be given before recording finding adverse to officer's conduct which disentitles officers for any future employment. Hence Hon'ble Supreme Court has reminded that all quasi judicial authorities have to ensure the observance of the principles of natural justice in all stages of enquiry.

13. Ld. Counsel for the employer / first party has submitted that the applicant made misrepresentation and concealment of fact by not mentioning his actual 'category' in 'attestation form' and 'answer sheet'. During the scrutiny, when the applicant was asked to furnish 'ST' certificate, he admittedly informed that he belongs to 'backward category' and not to 'ST' category which he exhibited in 'attestation form'. He was on 'probation' and according to condition no. 9(29) mentioned in the 'attestation form', his appointment was cancelled and the workman was terminated and no enquiry was required to be conducted

in the circumstances. Ld. Counsel for employer / first party has cited following judicial pronouncements in support of his argument:

i. Bank of India V Avinash D. Mandivikar, 2005 (1) 7 SCC 690

ii. Gujarat Industrial Development Corp. V Revabhai Maganbhai Patel, 2013 (3) GLH 367 (Guj.)

14. It is an admitted fact that no enquiry has been conducted before termination of the applicant / workman in the present case. Applicant / workman has referred Dipti Prakash Banerjee V Satvender Nath Bose, National Centre of Basis Sciences, Calcutta and anr., AIR 1999 SC 983, wherein Hon'ble Supreme Court has framed three points for consideration. The first point is relevant in the present case which reads as under:

“(1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?”

Hon'ble Apex Court in Para 22 held as under:

“If the findings were arrived at in enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as ‘founded’ on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of allegation because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and simple order of termination would be valid.”

15. In the case cited by employer and decided by Apex Court in Bank of India V Avinash D. Mandivikar, (Supra), employee obtained employment in the service on the basis that he belonged to ‘ST’. Apex Court held that when the clear finding of the scrutiny committee was that he did not belong to ‘ST’, the very foundation of his appointment collapses and his appointment is no appointment in the eyes of law. There is absolutely no justification for his claim in respect of post, he usurped, as the same was meant for reserved candidate. Hon'ble Apex Court further held that a person who has a legitimate claim shall be deprived of the benefits. On the other hand, a person who has obtained it by illegitimate means would continue to enjoy it notwithstanding the clear finding that he does not even have a shadow of right even to be considered for appointment. Hon'ble Apex court referred Bhaurao Dadgu Paralkar V State of Maharashtra and ors., 2005 7 JT 530, in which the Hon'ble Supreme Court dealt with the effect of fraud and held as follow:

“14.....Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false’.

15. This aspect of the matter has been considered recently by this Court in Roshan Deen v. Preeti Lal 2002 (1) SCC 100, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education 2003 (8) SCC 311, Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another 2004 (3) SCC 1.

16. Suppression of a material document would also amount to a fraud on the court. (see Gowrishankar v. Joshi Amba Shankar Family Trust 1996 (3) SCC 310 and S.P. Chengalvaraya Naidu's case (supra).

17. “Fraud” is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav's case (supra).

18. In Lazarus Estate Ltd. V/s Beasley 1956 1 QB 702, Lord Denning observed at pages 712 & 713, “No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.” In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity.

19. These aspects were recently highlighted in the state of Andhra Pradesh & anr. V/s T. Suryachandrarao, 2005 (5) SCALE 621.”

Therefore, the foundation of the case in hand can also be covered under the aforesaid concept of ‘fraud’.

16. Similarly, Hon'ble Gujarat High Court in Gujarat Industrial Development Corp. V Revabhai Maganbhai Patel, (Supra), in the similar facts and circumstances, while interpreting Section 17-B of Industrial Disputes Act, 1947 referred and applied the ratio of Bank of India V Avinash D. Mandivikar (Supra) and observed as under: “The argument of Ld. Advocate for the respondent that the action of the petitioner authorities is without following due procedure of law, though factually is right, will not take the case of respondent any further, since the very foundation of the appointment now does not exist”.

17. The picture, which emerges on the basis of factual and legal background, depicts as under. The employer / first party, vide its advertisement dated 20.05.1989, invited applications for recruitment on the post of 'Engineering Assistant' in various categories. The applicant had applied in response to the said advertisement and was appointed as 'Engineering Assistant' in the 'ST' category on the basis of his disclosure in the 'answer sheet' and 'attestation form' on the post which was reserved for 'ST' candidate. Para 3 at Page 1 of the 'attestation form' which was signed by the applicant stipulated as under: "If the fact that false information has been furnished or there has been suppression of any factual information in the attestation form, comes to notice at any time during the service of a person, his services would be liable to be terminated." The 'attestation form' was signed by the applicant / workman on 08.01.1989. The applicant / workman has himself admitted in response to the memo issued by the employer / first party no. 2 that he does not belong to 'ST' community but to 'backward class' community. However the workman failed to score minimum marks in other categories also. On the basis of response submitted by the applicant / workman, the employer / first party no. 2 passed order on 27.11.1991 to the effect of terminating the services of the applicant / workman w.e.f. 28.11.1991 with the observation that he does not stand chance for selection among any other community. It is true that the employer had not conducted any departmental enquiry against the applicant / workman. In my view, the facts of the present case in hand are similar to the facts of Avinash D. Mandivikar (Supra) decided by Hon'ble Supreme Court and Revabhai Maganbhai Patel (Supra) decided by Hon'ble Gujarat High Court. Accordingly, the applicant / workman had obtained appointment in service on the basis that he belonged to 'ST' and when it was found that he did not belong to scheduled tribe, the very foundation of his appointment collapsed and his appointment is no appointment in the eye of law and there can be no justification for his claim in respect of the post, he usurped as the same was made for a reserved candidate in 'ST' category. Reliance placed by Ld. Counsel for the applicant / workman on the afore-listed decisions of Hon'ble Supreme Court and Hon'ble Gujarat High Court etc. may not take the case of applicant / workman any further in the present facts situation in hand. Accordingly, the applicant's appointment is no appointment in the eye of law, has no justification of claim for the said post and the said 'termination order' be treated as cancellation of his appointment. He is also not entitled to any benefit under Section 25 (F) and 25 (G) of the Industrial Disputes Act, 1947.

18. For the reasons recorded above, the claim of the applicant does not stand. The action of the Supdt. Engineer, All India Radio, Rajkot in terminating the services of Sh. Nitinkumar R. Begtharia, Engineering Assistant after having worked from March 90 to 28th November 1991, w.e.f. 28th November 19 91 by giving reason that he was appointed on one of the reserved vacancy of Scheduled Tribe Community is valid, just and legal and requires no interference. The point no. 2 is decided against the applicant / workman accordingly. The applicant / workman is not entitled for any relief.

19. The award is passed accordingly.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वरिष्ठ डाक अधीक्षक, रांची, (झारखंड), के प्रबंधतंत्र के संबद्ध नियोजकों और सुश्री प्रीति कुमारी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय-2, धनबाद पंचाट (संदर्भ सं. 27 of 2013) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/88/2012- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27 of 2013) of the Central Government Industrial Tribunal-Cum-Labour Court-II, Dhanbad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Sr. Superintendent of Post Offices, Ranchi, (Jharkhand), and Ms. Priti Kumari, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/88/2012- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

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

Present: Dr.S.K.THAKUR, Presiding Officer.

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

REFERENCE NO. 27 OF 2013.

PARTIES: : Ms.Priti Kumari ,
Daily Wage Data Entry Operator,
D/O Sri Gobardhan Prasad Barai,
Upper Bazar, Raghunandan Lane Lohardaga,
Jharkhand-835302
Vs.
The Sr. Superintendent of Post Offices,
Ranchi Division,
Ranchi, Jharkhand

Order No. L-40012/88/2012-IR(DU) dt. 21.012013

On behalf of the workman/Union : Herself

On behalf of the Management : Mr.C.Jha,, Ld. Advocate

State : Jharkhand Industry : Post
Dated, Dhanbad, the 17th December, 2021

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No. L-40012/88/2012-IR (DU) dt. 21.012013.**

SCHEDULE

“Whether the termination of employment of Ms.Priti Kumari, Daily Wage Data Entry Operator w.e.f. 23.09.2011 through verbal orders of the management of Lohardaga GPO is legal and justified? If not, to what relief she is entitled to? ”

1 On receipt of the **Order No. L-40012/88/2012-IR(DU) dt. 21.012013** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 27 of 2013 on 07.02.2013 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

2. The order of Reference by the Government of India, Ministry of Labour & Employment in endorsement to the parties raising the dispute following directives were given:

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

3. Despite the directive given as above the parties which raised the dispute did not file written statement of claim. It was filed on behalf of the workman after several opportunities were granted. Since first date of hearing on 06.05.2013 to 15.07.2021 the workwoman failed to file any documentary evidence in support of her claim as her engagement in Daily Wage Date Entry Operator . The workwoman also failed to appear or represent after 24.07.2015 despite opportunity given for hearing and filing of documents. Fresh directive was issued on 15.07.2019 for filing of rejoinder on the next date of hearing. But the workman failed to appear or represent for filing of rejoinder on the last date of hearing on 15.07.2021.

4. From the above it is apparent the workwoman has not only failed in filing any documents in support of her claim but also showed unwillingness in pursuing her claim by remaining absent repeatedly on various dates of hearing fixed or providing opportunity the workwoman as a matter of natural justice.

5. As such the workwoman concerned (Priti Kumari) in the instant reference No. 27/2013 does not deserve any relief and so no relief is awarded by this Tribunal.

Dr. S.K.THAKUR, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रधान वैज्ञानिक और प्रमुख, पूर्वी क्षेत्र आईसीएआर अनुसंधान परिसर, अनुसंधान केंद्र, पलांडू रांची; श्री अजय कुमार सिंह, ठेकेदार दुकान नंबर सी-92, जेपी मार्केट, पीओ: धुर्वा, रांची, के प्रबंधन के संबद्ध नियोजकों और महासचिव, झारखंड जनरल कामगार यूनियन, गंगू टोली, रांची, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ सं. 130 of 2013) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.12.2022 को प्राप्त हुआ था।

[सं. एल-42011/84/2012- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 130 Of 2013) of the Central Government Industrial Tribunal-Cum-Labour Court-II, Dhanbad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Principal Scientist & Head, ICAR Research Complex for Eastern Region, Research Centre, Palandu Ranchi; Shri Ajay Kumar Singh, Contractor Shop No. C-92, J.P Market, PO: Dhurwa, Ranchi, and The General Secretary, Jharkhand General Kamgar Union, Gangu Toli, Ranchi, which was received along with soft copy of the award by the Central Government on 12.12.2022.

[No.L-42011/84/2012-IR- (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

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

Present: Dr. S.K.THAKUR, Presiding Officer

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

REFERENCE NO 130 OF 2013.

PARTIES: : Sh. Anjani Kumar Pandey,
General Secretary,
Jharkhand General Kamgar Union,
Gangu Toli, RANCHI
Vs,
1) The Principal Scientist & Head,
ICAR Research Complex for Eastern Region, Research Centre,
Palandu Ranchi.
2) Shri Ajay Kumar Singh,
Contractor Shop No. C-92, J.P Market,
PO: Dhurwa, RANCHI
L-42011/84/2012-IR (DU) Dt. 06.12.2012

APPEARANCES :

On behalf of the workman/Union : Mr.Anjani Kr.Pandey, Workman Himself .
On behalf of the Management : Mr.Y.N. Pathak Representative of the OP/Management

State: Jharkhand

Industry : Agriculture
Dated, Dhanbad, the 22nd June, 2022

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-42011/84/2012IR (DU) dt. 06.12.2012.

SCHEDULE

Whether the denial of Management for payment of 20% bonus to the workers is legal and justified? If not, what relief the workmen are entitled to in terms of money?"

1. The Government of India in Ministry of Labour & Employment has referred the present dispute between employer, i.e. the management of ICAR Research Complex for Eastern Region Research Centre, Palandu, Ranchi and its claimant herein, under clause (d) of Sub Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act 1947 vide letter No. L42011/84/2012-IR (DU) dt. 06.12.2012 to this Tribunal for adjudication to the following effect.

This order deals with the grievance of the claimants with regard to the non-payment of 20% Bonus as they described the action unreasonably unjustified to the charge but do not contain list of claimants involved. The subject matter of reference is predominately a policy-oriented action/decision of the Management to be applicable and admissible to the claimants (workmen) or not is to be adjudicated.

2. In their written statement of the claim the Union General Kamgar Union represented by Anjani Kumar Pandey set out the claims:

- A) That most of the workmen involved in the case had been working under the OP/Management since 2001 whereas some from 2003, and rest of them since inception.
- B) They had taken up the issue of 20% Bonus with RLC(C) Ranchi but upon failure the matter was referred to appropriate government for forming Schedule.
- C) Despite out protest against atrocities being committed by the Management it do not let them to be absorbed permanently nor make their intention clear to bring us under the fold of Payment of Bonus Act 1965.
- D) Under the provision of Bonus Act 1965 a worker who has completed thirty days of work is entitled for Bonus .But there is discrimination in payment of bonus which is being paid.
- E) The claimants in the claim petition have thus prayed for an award directing the Management to make the claimants payments 20% Bonus at par with the temporary workers of the OP/Management of ICAR, Research Complex, Ranchi.
- F) To fulfill the demand over Bonus they /Union (Claimants) took up the matter with Regional Labour Commissioner (C) for 20 percent Bonus with for permanent absorption of the workmen. The OP/management introduced Contractor Work System in 2009 amidst wide protest.
- H) To the face of wide protest they were placed under the Contractor System as enforced by the OP/Management and brought all of them under its fold to keep them away from being absorbed. Under the Bonus Act, 1965 an worker who worked 30 days is entitled for Bonus and thus they claimed to be have acquired entitlement for Bonus that the same ought to be paid
- I) But the same did not happen and even RLC © also turned down the request .We all workmen had been working since 2001.Since the days long back the matter suggested for Bonus @ 20 % for all the workers. So we all seek direction to the Management to provide 20 % Bonus to all Workers to have two squares of meal a day.
- J) The claimants in the claim petition have thus prayed for an award directing the Management to make the claimants payments 20% Bonus at par with the temporary workers of the OP/Management of ICAR, Research Complex, Ranchi.

The claimant filed rejoinders reiterating the stand taken in the claim of petition.

3) The OP/Management(ICAR RCER,ResearchCentre,Ranchi-10) Principle Scientist and Head, CAR Research Complex for Eastern Region, Research Central Palandu, Ranchi filed written statement stating the present Reference in itself is not maintainable either in facts or in law as the said union who sponsored the matter does not have support of majority of the workmen

- A) That the instant Reference is bad for non joinder of necessary party as the Contractor under whom the workmen are employed has not been made a party.

- B) That there is no employer and employee relationship between the Management and the workmen represented by the Union and thus the claim is not maintainable and is liable to be dismissed.
 - C) That the Respondent is an institute of ICAR an Autonomous body of DARE, Government of India under the Ministry of Agriculture.
 - D) That in accordance with government policy certain jobs/works are being outsourced to contractors and farm jobs have been outsourced to Sri Ajay Kumar Singh,(contractor) who is employing workers as per Respondent's requirement.
 - E) That it is stated that in the job contract and work order it is responsibility of contractor to ensure compliance with all labour laws which include minimum Wages Act, Payment of Bonus Act etc.
 - F) That it is stated that General Kamgar Union raised the dispute of non-payment of Bonus before the Respondent No. 4 (Regional Labour Commissioner ,Ranchi
 - G) That the Regional Labour Commissioner (C)Ranchi issued notice to the OP/Management along with a copy of the application so submitted by the Respondent No. 2 for conciliation.
 - H) That the Management submitted its reply inter alia that there is no relationship of employer-employee between the parties and that earlier also dispute raised by the General Kamgar Union was twice rejected by Appropriate Government citing said reason. (Copy enclosed)
 - I) That it is stated that existence of employer-employee relationship is sine qua non for referring an Industrial Dispute for adjudication.
 - J) That in view of aforesaid the workmen are not entitled to any relief whatsoever.
4. Shri Ajay Kr. Singh, Contractor of Management No. 2 submits following facts as under:
- a) That as it is stated appearance of the contractor has been made being party to the Reference with that the said dispute referred by the Central Government exists between the Management of ICAR Research Complex for Eastern Region and their workmen.
 - b) It is further stated that a copy of the aforesaid notification has been endorsed to Shri Ajay Kumar Singh, Contractor which has been received by him as such appeared before this Hon'ble Tribunal .
 - c) That at the outset it is stated that instant Industrial dispute as referred by the Central Government, exist between the Management of ICAR Research Complex for Eastern Region and their workmen. Neither the answering contractor, has been made party to the dispute nor was any demand ever raised by the union or the workmen before him. As such the instant proceeding cannot continue against the answering contractor.
 - d) That in fact the Union raised its demand of 20% Bonus before the RLC(C), Ranchi who initiated conciliation proceeding and issued notice upon the Management (ICAR Research Complex for Eastern Region) enclosing therewith the letter of demand inviting comments within two weeks.
 - e) That as the Management forwarded the said notice to the contractor inviting his comments. Accordingly the contractor also submitted his comments to the management as asked for.
 - f) That without prejudice to the aforesaid objection, following facts are stated for consideration and for the purpose of adjudication:
 - (i) That the contractor had been engaged time to time as one of the contractors by the Management for supply of unskilled Agricultural Labourers.
 - (ii) That the Management invited tender for file operation (JOB Contract) for different types of work at ICAR-RCER, Research Center, Ranchi vide Tender Notice dt. 13.08.2021. The tender of the contractor dt. 13.08.2011 was approved and communicated to him.
 - (iii) That after approval of the aforesaid tender there was an agreement between the management and the answering contractor
 - (iv) That upon execution of agreement on the terms and conditions post approval the Contractor was only obliged to pay the Minimum Wages, EPF contribution @ 13.61 and ESI Contribution @ 4.75 to the Labours engaged by him including Income Tax.
 - (v) That it is further stated the management used to issue work order every month and contractors are required to execute their work in accordance with the said work order. In practice the Management only required manpower to execute their work.

- (vi) In compliance to the aforesaid work orders the contractor supplied labourers as would appear from the attendance –cum- wage Register,
- (vii). That similarly every month the work orders are issued by the Management and accordingly the contractor deploy the workers on need basis.
- (viii) That on combined reading of the Work Order, attendance Register and Payment vouchers it will appear that there is no scope for the contractor to save more than his service charge. Rather it will appear that the contractor sustained loss in most of the months.
- (ix). That it is worth mentioning that the demand of the Union contains list of 29 workers. Out of those 29 workers only 8 workers were deployed by the answering contractor, which is evident from the attendance-cum-wage Registers for remaining workers whose names are listed, the answering contractor is not in a position to state their whereabouts.
- (x). In another important fact the contractor stated that except the eight workers none of workers whose names are appearing in the list attached to the letter of demand have ever worked under the answering contractor.
- (xi). That in the facts and circumstances the demands made by the Union are untenable as against Shri Ajay Kumar Singh, Contractor.
5. Hearing in the matter proceeded with evidence from few of the workers; Management side and Contractor were also recorded.

6. However on perusal of Reference from the Government it was found that the Reference was made in general manner as following;

“Whether the denial of Management for payment of 20% bonus to the workers is legal and justified? If not, what relief the workmen are entitled to in terms of money?”

But the list of the workers for whom adjudication was to be done by the Tribunal with the above Reference was not forwarded by the Government .As such it was not prudent to proceed with such a Reference without the list of the workmen for whom the Reference has been made to the Tribunal for adjudication because the Award under such circumstances would become an Award for unknown workmen for whom dispute has been raised. Further, disputes with plethora of grievances and subsequently a number of Industrial Disputes regarding the workmen involved in such blanket Reference. Award can be passed only for payment of bonus as per claim/demand to the concerned workers only and it cannot be passed for unknown persons in the name of the union only.

7. Therefore, it was decided that let the concerned workmen file their claim through concerned Union and its leader with details of employment as claimed along with the period claimed to have worked, the wages paid to the concerned period of claim, etc. as required to claim for bonus and then subsequent reply after verification by the Management and/ or the contractor, (Opposite Parties to the dispute raised by the Union).

8. During the proceeding on 22.01.2020 the workmen side was directed to file written argument in the matter with documents in support of the points and facts mentioned in the Written Argument to substantiate the claim from workmen side as the Management and Concerned Contractor have already filed Written Argument and served upon the workmen side. The Union leader present during the proceeding prayed for time and accordingly the matter was fixed for subsequent hearing on 29.04.2020. The Covid-2019 pandemic had spreaded and lockdown was imposed by the Union Government and State Government for a long period subsequently and so the next hearing was undertaken on 28.01.2021 duly sending the notice to all side for hearing.

9. During hearing on 28.01.2021 and in presence of all respective sides the Union leader was explained about shortcoming in the Reference and it was directed to file claim by the concerned workers with details required for adjudication of the reference made to the Tribunal and serving copy of such claims to the management and concerned contractor for filing their counter reply. The Union leader present in the hearing prayed for time to file claim from the concerned workmen and the same was allowed.

10. The next hearing was held on 20.07.2021 after due notice to all concerned. None appeared for the workmen nor could any claim could be filed from workmen side. As such another opportunity was provided to the workmen side for filing the details of claim.

11. The case was accordingly heard on 20.09.2021 after issuing notice for hearing in advance to all concerned. The workmen side again failed to represent and file their claim. In the above circumstances when the workmen side failed repeatedly to represent and file their claim by the concerned workmen the matter was closed for hearing and reserved for Award.

12. The wait was made for some more time for workmen side to file their claim but no claim filed by the workmen side for considerable period .The concerned file was called for, examined and considered for passing of the Award based on the facts, submissions and documents available on record.

13. On perusal of documents filed by Management side (ICAR Research Institute Plandu Ranchi) the communications dtt. 13.01.2012 and 17.01.2012 by the Government of India, Ministry of Labour & Employment it was found that the appropriate Government has rejected the dispute raised by Shri Anjani Kumar Pandey, General Secretary, Jharkhand General Kamgar Union, Gangu Toli, Ranchi with the observation that “the workmen are covered under Contract Labour (Regulation & Abolition Rules, 1970).Hence the dispute does not exist under the Industrial Dispute Act., 1947”. Copies of these two communications are reproduced below for ready reference.

.....
L-42011/194/2011-IR(DU)

Government of India/Bharat Sarkar

Ministry of Labour/Shram Mantralaya

New Delhi ,Dated: 17/01/2012

To,

1.The Principle Scientist & Head, ICAR

Research Complex for Eastern Region Research

Centre, Plandu

RANCHI,Jharkhand

Jharkhand

2. Shri Anjani Kumar Pandey,

Jharkhand General Kamgar Union,

Gangu Toli, RANCHI,Jharkhand

Jharkhand

Subject :ID over regularization of Shri Sukra Kachhap and 16 others of Awla Farm under the Complex for Eastern Region Research Centre, Ranchi

Sir,

I am directed to refer to the Failure of Conciliation Report No. 1(07)/2011-RLC (R) dated . from the RLC(RANCHI) received in this Ministry on 12/10/2011 on the above mentioned subject and to say that, prima facie, this Ministry does not consider this dispute fit for adjudication for the following reasons:

“The workmen have been employed by the contractor, who has been given a contract by the Management of ICAR. The Union ailed to submit any documentary evidence in support of their contention that the workmen are directly employed by the management of ICAR. There is no direct employer-employee relation in this case. The workmen are covered under contract Labour (Relation & Abolition) Rules, 1970.Hence the dispute does not exist under I.D. Act., 1947.”

Yours faithfully,

Sd/-illegible

(Ramesh Singh)

Desk Officer

T.No. -23473150

Email

Copy to

i) Regional Labour Commissioner(Central),RANCHI

ii) Assistant Labour Commissioner(Central),RANCHI

iii) Guard file

iv) C,R.Section

Sd/-illegible

(Ramesh Singh)

Desk Officer

T.No. -23473150

Email

.....
.....

No. L-42011/193/2011-IR(DU)

Government of India/Bharat Sarkar

Ministry of Labour/Shram Mantralaya

New Delhi ,Dated: 17/01/2012

To,

1. The Principle Scientist & Head, ICAR

Research Complex for Eastern Region Research

Centre, Plandu

RANCHI

2. Shri Anjani Kumar Pandey,

Jharkhand General Kamgar Union,

Gangu Toli, RANCHI

Subject :ID over regularization of Shri Kishor Munda and 41 others of Churu Farm under the ICAR Complex for Eastern Region Research Centre, Ranchi

Sir,

I am directed to refer to the Failure of Conciliation Report No. 01(06)/2011-RLC (R) dated 19/09/2011 from the RLC(RANCHI) received in this Ministry on 11/10/2011 on the above mentioned subject and to say that, prima facie, this Ministry does not consider this dispute fit for adjudication for the following reasons:

“The workmen have been employed by the contractor, who has been given a contract by the Management of ICAR. The Union ailed to submit any documentary evidence in support of their contention that the workmen are directly employed by the management of ICAR. There is no direct employer-employee relation in this case. The workmen are covered under contract Labour (Relation & Abolition) Rules, 1970. Hence the dispute does not exist under I.D. Act., 1947.”

Yours faithfully,

Sd/-illegible

(Ramesh Singh)

Desk Officer

T.No. -23473150

Email

Copy to

v) Regional Labour Commissioner(Central),RANCHI

vi) Assistant Labour Commissioner(Central),RANCHI

vii) Guard file

viii) C,R.Section

Sd/-illegible

(Ramesh Singh)

Desk Officer

T.No. -23473150

Email

14. Through the above referred communications from Government of India, Ministry of Labour & Employment it has been decided by the appropriate Government that the Industrial Dispute Act., 1947 does not apply in respect of the workmen engaged through the Contractor by the Management (Principal Scientist and Head ICAR Research Complex for Eastern Region Ranchi Centre, Plandu Ranchi). Once the matter on regularization of the same set of workmen employed through the Contractor cannot be covered under the Industrial Dispute Act, 1947 for the purpose of regularization then the same set of workmen engaged by the Contractor cannot be covered under the Industrial Dispute Act, 1947 for the purpose of Bonus also (Ratio of decision applied).

15. Based on the above findings following are derived:

- i) The workmen represented through authorized Union/Union Leader have failed to file their specific claim for the individual workers involved in the Reference made by Ministry of Labour & Employment, Government of India, Reference No. 130/2013 (Instant Case) despite several opportunities provided.
- ii) The Industrial Dispute Act., 1947 do not apply to the workmen employed by the Contractor as per the decision communicated by Government of India (Supra).

16. Based on the above findings this Tribunal is of the view that the workmen engaged by the Contractor for working in the premises of subject Management (ICAR Research Complex for Eastern Region, Research Centre, Plandu Ranchi) do not qualify to get relief under the Industrial Dispute Act., 1947 in the instant Reference Case and so no relief is awarded.

Dr. S.K.THAKUR, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स गैरिसन इंजीनियर्स और 5 अन्य, सैन्य इंजीनियरिंग सेवाएं, आईएनएस राजाली, अरक्कोणम, के प्रबंधन के संबद्ध नियोजकों और श्री एम. जॉर्ज, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-चेन्नई के पंचाट (संदर्भ सं. 327/2001) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-14012 /28/2000- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1325.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 327/2001) of the Central Government Industrial Tribunal cum Labour Court, Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Garrison Engineers & 5 Others, Military Engineering Services, INS Rajali, Arakkonam, and Shri M. George, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-14012 /28/2000- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL CHENNAI

ID 327/2001

Present: DIPTI MOHAPATRA, LL.M. Presiding Officer

Date: 04.08.2022

Sri M. George
27, Cheyyar Road

Griglespet, Ambedkar Nagar
Arakkonam-631002

...1st Party/Petitioner

Vs.

M/s Garrison Engineers & 5 Others
Military Engineering Services
INS Rajali
Arakkonam-651002

...2nd Party/Respondents

Appearance:

For the 1st Party/Petitioner : Advocates, M/s Balan & Haridas
For the 2nd Party/Respondents : Advocate, Sri R. Kumar

AWARD

The Central Government, Ministry of labour & Employment vide its Order No. L-14012 /28 /2000 /IR(DU) referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Garrison Engineer, Military Engineering Service, INS Rajali, Arakkonam in terminating the services of Sri M. George who has been engaged through TNR Enterprises for operation and maintenance of DG Sets w.e.f.02.08.1998 is legal and justified? If not, to what relief the workman is entitled?”

2. A little reference to the backdrop of the case needs mention that after registration of the dispute as per the reference, the case was registered as ID No. 327/2001. The case was disposed of by the then Presiding Officer on 24.08.2004. The Claim Petition was dismissed. The Petitioner challenged the order dtd. 24.08.2004 of the Tribunal before the Hon’ble High Court of Judicature of Madras vide WP No. 259/2017. It reveals since many of the Petitioners under the same Respondent have challenged for redressal of their grievance in different Writ Petitions, the Hon’ble High Court has taken up all the Writ Petitions and passed the Common Order on 18.09.2017 by setting aside the order of the Tribunal dtd. 24.08.2004 and remitted back all the cases including the instant case for re-trial and early disposal. The Respondent also approached the Hon’ble High Court in WP No. 30888 and 30889 of 2016 and WMP No. 26759 and 26760 of 2016 and 628-631 of 20-17 which were also disposed of by the Hon’ble Court on the same day i.e. 18.09.2017 directing the Tribunal to take up the case for early disposal.

3. Accordingly, in compliance to the direction of the Hon’ble Court and after receipt of the records, necessary order was passed for issuance of fresh notices vide order dtd. 28.01.2019. Since then, the case simply lingered to such an extent till 11.11.2021 intervening 24 adjournments. On 11.11.2021 both parties were present. The Counsel for the Petitioner submitted that he has no instruction as well as he was informed regarding the death of the Petitioner. The Learned Counsel sought for time to ascertain the correctness of the information of death of the Petitioner. Time is accordingly allowed. The Learned Counsel was afforded with several adjournments for the same purpose on his request till 26.05.2022 intervening 10 adjournments. The Learned Counsel files a memo to decline to proceed with the ID case due to no instruction. However, in the interest of justice the Tribunal suo-moto afforded adjournments granting liberty to the Counsel for the Petitioner to file the Death Certificate of the Petitioner. Accordingly, the Death Certificate of the Petitioner issued by the Competent Authority vide dtd. 20.03.2018 was produced by the Learned Counsel. For the interest of justice, further adjournments were suo-moto given to the Learned Counsel to produce Legal Heir Certificate. The Learned Counsel also submitted that he has taken all effective steps to contact the Legal Heirs intended to be substitute in the place of deceased Petitioner. Despite his sincere efforts, none on behalf of the deceased Petitioner contacted him to proceed with the case. The Learned Counsel also made communication in the address of the deceased Petitioner for this purpose which was returned un-served as Dead. Not a single scrap of document / petition is received from any corner claiming for substitution in the place of deceased Petitioner. The Learned Counsel at this juncture filed “No Instruction Memo”.

4. In the fact and circumstance since the Petitioner expired leaving no Legal Heir for Substitution, it deems fit to close the proceeding. Thus, the case is liable for dismissal in accordance to Law.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

The ID case stands dismissed

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1326.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पोस्ट मास्टर, डिंडीगुल प्रधान डाकघर, डिंडीगुल; उप-विभागीय निरीक्षक (पी) नाथम उप-मंडल, नाथम, डिंडीगुल; वरिष्ठ अधीक्षक, डाकघर डिंडीगुल डिवीजन डिंडीगुल के प्रबंधन के संबद्ध नियोजकों और श्री के.एम. शाहुल हमीद, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-चेन्नई के पंचाट (संदर्भ सं. 55/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/15/2016- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1326.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/2017) of the Central Government Industrial Tribunal cum Labour Court, Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Post Master, Dindigul Head Post Office, Dindigul; The Sub-Divisional Inspector (P) Natham Sub-Division, Natham, Dindigul; The Senior Superintendent of Post Office Dindigul Division Dindigul and Shri K.M. Shahul Hameed, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/15/2016- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL CHENNAI

Thursday, the 30th June, 2022

Present: DIPTI MOHAPATRA, LL.M. Presiding Officer

ID 55/2017

BETWEEN

Sri K.M. Shahul Hameed
S/o Mohamed Yusuf
No. 1/54, Vathipatti Village & Post –Natham Taluk
Dindigul District-624401

...1st Party/Petitioner

AND

1. The Post Master
Dindigul Head Post Office
Dindigul-624001

...2nd Party/1st Respondent

2. The Sub-Divisional Inspector (P)
Natham Sub-Division
Natham
Dindigul-624401

...2nd Party/2nd Respondent

3. The Senior Superintendent of Post Office
Dindigul Division
Dindigul-624001

...2nd Party/3rd Respondent

Appearance:

For the 1 st Party/Petitioner	:	Advocates, M/s R. Malaichamy and Associates
For the 1 st , 2 nd & 3 rd Respondent	:	Advocate, Sri P. Murali Krishnan

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/15/2016-IR (DU) dtd. 09.05.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Senior Superintendent of Post Offices, Dindigul Division, Dindigul-624001 in stopping / removing Sri K.M. Shahul Hameed from the service of Gramin Dak Sevak Branch Post Master/Mail Deliverer with effect from 09.09.2015 is legal and justified? If not, to what relief, the workman is entitled to?”

2. On receipt of the above reference dtd. 09.05.2017 from the appropriate Government, the dispute was registered as ID No. 55/2017 and due notices were issued to both the parties for their appearance and hearing.

3. The brief facts of the Applicant's case is that in view of a arranged local appointment by Third Respondent, the Branch Post Master at Vathipatti Branch Office of Natham, appointed the Petitioner as an outsider in the place of one Sri M.H. Ghani, a permanent incumbent of the post of Branch Post Master (BPM) who remained on leave from 01.06.1996 to 15.09.2011. The Petitioner while was working as such, the Competent Authority added additional duties of BPM and Mail Deliverer (MD). The Petitioner carried on with the job with utmost care and devotion to duty for the above period. Since the said permanent incumbent again proceeded on long leave, the Petitioner was once engaged as an outsider at his place from 16.05.2014 with an intermittent break till 08.09.2015. The Petitioner requested for his absorption as Gramin Dak Sevak (GDS) in the Office of the Branch Post Master. But such request was turned down and he was denied duties from 09.09.2015.

4. With this backdrop, the Petitioner submits that he had completed 3 years as BPM and MD at Vattipatti Branch Office. The Third Respondent is liable to absorb the Petitioner on any of the posts as BPM or MD either at Vattipatti Post Office or against any clear vacant post as much as the Petitioner has completed more than 240 days of work in the Calendar Year. But the benefit of absorption was denied to him. At the same time, the Department of the Respondents used to engage outsiders without abiding the rules. The action of the Respondents in refusing the employment to the Petitioner is illegal, unjustified, unconstitutional and contrary to the principle of natural justice. The action of the Respondent removing the Petitioner without any prior notice amounts to violation of Section-25F of the ID Act. Finding no other way out, the Petitioner raised the dispute before the Conciliation Officer, the Regional Labour Commissioner (C), Madurai. Since the dispute could not be resolved, the Conciliation Failure Report was sent to the Appropriate Government resulting in reference.

5. Despite of 17 adjournments though afforded, all the Respondents did not enter appearance resulting in setting them ex-parte vide this Tribunal's Order dtd. 05.08.2019. In view of the facts supra, the following issues are settled:

1. If the Petitioner/Claimant Sri K.M. Shahul Hameed was engaged by the Third Respondent in two spells i.e. for the period from 01.06.1996 till 05.09.2011 and from 06.05.2014 to 08.09.2015 in place of Sri M.H. Ghani, a permanent incumbent who was on leave?
2. Whether the denial to do duty by the Petitioner from 09.09.2015 by the Respondents is illegal and arbitrary?
3. Whether the Petitioner is entitled to the relief sought for his reinstatement with continuity of service, backwages and all other attendant benefits?

6. The Petitioner adduced evidence as WW1 and produced 16 nos. of documents marked as Ext.W1 to Ext.W16. Needless to say, the Respondents are set ex-parte.

Point No. 1 & 2

7. Since both the issues are inter-linked inter-alia are taken up together.

The admitted fact remains that the Petitioner was engaged by the Third Respondent as a local arrangement in the place of one Sri M.H. Ghani, a permanent incumbent who was on leave from 01.06.1996 to 15.09.2011. The Petitioner in his Claim Statement as well as in his Evidence has categorically stated to have been directed for additional work of a Branch Post Master and Mail Deliverer beyond to his duties as per engagement against the post lying vacant of Sri M.H. Ghani. In support of the fact of his engagement, the Petitioner though filed some documents under Ext.W1 to Ext.W8, it reveals those are haphazardly filed and

there is no document for the missing period. It is pertinent to mention that the Petitioner failed to produce any document showing his engagement as claimed from 1996 onwards till 30.07.1998 and from 2002 to 2011. In the peculiar circumstance, even if it is accepted for a while for the sake of argument that the Petitioner was engaged for the period from 01.06.1996 to 05.09.2011 during the first spell, the Petitioner was engaged as an outsider in the place of Sri M.H. Ghani who remained absent unauthorizedly and on medical grounds. Besides, it reveals that the Petitioner was paid with due remuneration and allowances for the period he worked for the Respondent. It is quite difficult on the part of the Tribunal to cogently link up the missing period to give any relief to the claim so far as the first spell of work is concerned.

8. So far as the claim of the Petitioner for the second spell of work i.e. 06.05.2014 to 08.09.2015 is concerned, the documents under Ext.W9 to Ext.W12 are taken note of. These documents under Exhibits are found to be the extracts of Acquaintance Roll for the period of May 2014 (Ext.W9), month of September 2014 (Ext.W10), month of October 2014 (Ext.W11) and month of July 2015 (Ext.W12). Undoubtedly, these documents i.e. Ext.W9 to Ext.W12 while speaks about the engagement of the Petitioner for the period 0-6.05.2014 to July, 2015, it also speaks that the Petitioner was engaged as an outsider under the Respondent. The Petitioner in that capacity of an employee as an outsider was disbursed with some payments 05.05.2015 towards drawal of DA and allowance in view of the aforesaid Exhibits W9 to W12. The materials available on these documents nowhere whispers the continuity of service of the Petitioner as claimed till 09.09.2015 in any capacity under the Respondents. The documents under Ext.W13 to Ext.W16 needs no discussion sine those are copy of 2A Application and documents relating to Conciliation Proceedings.

9. Further, it is submitted that the Petitioner was not issued with any Appointment Order not any Order of Termination. In this context, it needs mention that the documents filed by the Petitioner when as self-explanatory with regard to the condition and job profile of the engagement of the Petitioner by the Third Respondent for the aforesaid period, he himself has admitted to have been engaged as an outsider. Besides, the Petitioner failed to adduce any oral evidence through any of his witness who might have any acquaintance with the case of the Petitioner. The denial of job to the Petitioner since not been supported with any convincing oral evidence or through any document, such plea cannot be accepted in favour of the Petitioner. Accordingly, there is no deviation on the part of Respondent so far as the ID Act is concerned.

The issue is answered against the Petitioner.

Point No. 3

10. In view of the discussion held in preceding paragraphs under Point No. 1 and 2 since the Petitioner was never appointed by the Respondent but engaged in absence of an employee, Sri M.H. Ghani on payment basis that too during the first spell as per the Exhibits W1 to W8. Besides, the Petitioner in his Claim Statement averred that he was assigned with the additional charge of BPM and MD during the first spell, but this part of his averment has not been supported with any documents nor corroborated by any Witness on his behalf.

11. It reveals that the Petitioner was simply engaged by the Respondent for the second spell and paid with remuneration as an outsider. Since, the fact of engagement as outsider is admitted by the Petitioner and supported with relevant documents i.e. Ext.W9 to Ext.W12, the engagement of the Petitioner cannot be considered to be a Casual or Temporary Employee under the Respondent. Since the Petitioner was not appointed as against a Casual/Contractual/Temporary/Permanent post, no occasion arose on the part of the Respondent to issue with any Appointment Order or Order of Termination but the Petitioner was engaged as an outsider. Such engagement of Petitioner in no way makes him eligible to the entitlements as sought for.

In the result, the Petitioner is not entitled to any relief as sought for.

The reference is answered against the Petitioner.

The ID stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1327.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिप्टी असिस्टेंट, एडज्यूटेन्ट जनरल फॉर कमाण्डर हैडक्वार्टस, 340, इंडिपेन्डेंट मेकेनाईज ब्रिगेड, के/आ 56 एपीओ;कमाण्डेन्ट (हैडक्वार्टस) 340, इंडिपेन्डेंट मेकेकनाईज ब्रिगेड, के/आ 56 एपीओ; 3. डिफेंस एडमिनिस्ट्रेटिव

सैक्रेटरी, मिनिस्टरी ऑफ डिफेंस, केन्द्र सरकार, नई दिल्ली, के प्रबंधन के संबद्ध नियोजकों और अजमेर जिला असंगठित श्रमिक संघ, गुर्जर टीला, नगरा, अजमेर (राज.), बाबत, श्री शैतान सिंह के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-जयपुर के पंचाट (संदर्भ सं. 19/2016) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.12.2022 को प्राप्त हुआ था।

[सं. एल-14011/25/2015- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1327.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2016) of the Central Government Industrial Tribunal cum Labour Court - Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Deputy Assistant, Adjutant General to Commander Headquarters, 340th Independent Mechanized Brigade, K/A 56 APO ;The Commandant (Headquarters), 340 Independent Mechanized Brigade, K/A 56 APO; The Defence administrative Secretary, Ministry of Defence, Central Government New Delhi , and Ajmer District Unorganized Labour Union, Gurjar Tila Nagra Ajmer, (Rajasthan), regarding Shri Shaitan Singh, which was received along with soft copy of the award by the Central Government on 11.12.2022.

[No. L- 14011/25/2015- IR (DU)]

D.K. HIMANSHU, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

सी.जी.आई.टी. प्रकरण सं. 19/2016

Reference No. L-14011/25/2015-IR (DU)

Dated: 15.02.2016

अजमेर जिला असंगठित श्रमिक संघ, 306/34,
गुर्जर टीला, नगरा,
अजमेर (राज0) बाबत श्रम विवाद श्री शैतान सिंह
पुत्र श्री गोपी सिंह रावत जरिये श्रमिक।

...प्रार्थी

बनाम

1. डिप्टी असिस्टेंट, एडज्यूटेंट जनरल फॉर कमाण्डर हैडक्वार्टस, 340, इंडिपेन्डेन्ट मेकेनाईज ब्रिगेड, के/आ 56 एपीओ।
2. कमाण्डेंट (हैडक्वार्टस) 340, इंडिपेन्डेन्ट मेकेनाईज ब्रिगेड, के/आ 56 एपीओ।
3. डिफेंस एडमिनिस्ट्रेटिव सैक्रेटरी, मिनिस्टरी ऑफ डिफेंस,

केन्द्र सरकार, सेना भवन, नई दिल्ली— 110001

....अप्रार्थीगण/विपक्षी

उपस्थित:—

प्रार्थी की तरफ से : कोई उपस्थित नहीं।
अप्रार्थी सं. 1 की तरफ से : श्री सुरेन्द्र सिंह (नालोट) अधिवक्ता।
अप्रार्थी सं. 2 व 3 की तरफ से : कोई उपस्थित नहीं।

: अधिनियम :

दिनांक : 2007/2022

CGIT-19/2016

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 15.02.2016 को औद्योगिक विवाद अधिनियम 1947 की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :-

क्या प्रबंधन श्रीमान डिप्टी असिस्टेंट एडज्यूटेंट जनरल फॉर कमाण्डर हैडक्वार्टस, 340, इंडिपेन्डेंट मेकेनाईज ब्रिगेड मार्फत 56 एपीओ तथा श्रीमान कमाण्डेंट हैडक्वार्टस 340, इंडिपेन्डेंट मेकेनाईज ब्रिगेड मार्फत 56 एपीओ द्वारा कर्मकार श्री शैतान सिंह पुत्र श्री गोली सिंह रावत की दिनांक 30.06.2005 से मौखिक आदेश द्वारा सेवा समाप्ति वैधानिक एवं न्यायसंगत है? यदि नहीं तो प्रार्थी किस राहत का और कब से पाने का हकदार है? ”

2. दिनांक 08.01.2018 को प्रार्थी ने दावे का अभिकथन प्रस्तुत करते हुये यह कहा कि श्रमिक शैतान सिंह रावत की नियुक्ति विपक्षीगण के अधीन 01.08.2003 को 1500/- रु. मासिक वेतन पर मौखिक आदेश से की गई। उसे यह अष्वासन दिया गया कि उसे नियमित रूप से माली के पद पर नियुक्त कर दिया जायेगा। प्रार्थी ने 01.08.2003 से 30.06.2005 तक 1 वर्ष 11 माह लगातार कार्य किया। 30.06.2005 को अप्रार्थी सं. 1 ने प्रार्थी को नौकरी से मौखिक आदेश से हटा दिया। प्रार्थी को सेवा से हटाने से पूर्व कोई नोटिस या नोटिस वेतन का भुगतान नहीं किया जो अधिनियम की धारा 25 (एम) (एफ) (बी) व (डी) का उल्लंघन है। प्रार्थी को नौकरी से हटाने के उपरांत उसके स्थान पर प्रेम चंद कोली और अल्लादीन को नियुक्त कर दिया गया। तत्पश्चात प्रार्थी अजमेर से बाहर चला गया और वापिस आने पर यह विवाद प्रस्तुत किया। अतः सेवा समाप्ति की तिथि से श्रमिक शैतान सिंह को विगत परिलाभों सहित सेवा में लेने का निर्णय पारित किया जावे।

3. विपक्षी सं. 1 ने वादोत्तर में प्रार्थी के कथनों को अस्वीकार करते हुये यह कहा कि भारतीय सेना कोई उद्योग नहीं है और प्रकरण 11 वर्ष बिलम्ब से प्रस्तुत किया गया है। प्रार्थी ने एक और प्रकरण 88/2015 इन्हीं आधारों पर अधिकरण के समक्ष प्रस्तुत किया है। प्रार्थी को विपक्षी द्वारा कभी नियुक्त नहीं किया गया इसलिये विपक्षी और प्रार्थी के बीच कर्मकार और नियोक्ता का संबंध नहीं है। और यह विवाद भी औद्योगिक विवाद की परिभाषा में नहीं आता। कार्य की उपलब्धता पर प्रार्थी कार्य को पूरा कर भुगतान प्राप्त कर लेता था जिसका कोई अभिलेख नहीं रखा जाता। प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है। अतः वाद निरस्त किया जाये।

4. विपक्षी सं. 2 व 3 के अनुपस्थित रहने के कारण उनके जबाब का अवसर बन्द कर दिया गया।

5. दिनांक 05.09.2019 से प्रार्थी की ओर से उसके पक्ष प्रस्तुतीकरण के लिए कोई भी उपस्थित नहीं हुआ। 31.03.2022 को प्रार्थी की लगातार अनुपस्थिति को देखते हुये प्रार्थी की साक्ष्य का अवसर समाप्त कर दिया गया। इस स्थिति में विपक्षी सं. 1 द्वारा भी कोई साक्ष्य प्रस्तुत नहीं करना चाहा। अतः साक्ष्य विपक्षी भी बन्द कर दी गई।

6. दिनांक 19.07.2022 को मेनें विपक्षी सं. 1 के मौखिक तर्क सुने और पत्रावली का अवलोकन किया। उनका यह तर्क है कि प्रार्थी ने अपने दावे के समर्थन में कोई साक्ष्य प्रस्तुत नहीं की है इसलिये वाद निरस्त किया जावे। मेनें इस तर्क पर विचार किया।

7. यहाँ यह उल्लेख किया जाना आवश्यक है कि प्रार्थी द्वारा अधिनियम की धारा 2 (ए) के अन्तर्गत एक परिवाद दिनांक 16.12.2015 को इस अधिकरण के समक्ष प्रस्तुत किया गया था। तदुपरांत प्रार्थी द्वारा प्रस्तुत परिवाद पर समुचित सरकार द्वारा यह विवाद 15.02.2016 को अधिनियम की धारा 10 (1) (डी) व 2 (ए) के अन्तर्गत इस अधिकरण को संदर्भित किया गया। इसलिये दिनांक 23.08.2017 को प्रार्थी द्वारा प्रस्तुत निजी वाद अन्तर्गत धारा 2 (ए), जिसे CGIT- 88/2015 पर पंजीबद्ध किया गया था को पश्चातवर्ती संदर्भित विवाद सं. 19/2016 के साथ निस्तारित करने हेतु संलग्न करने का आदेश पारित किया गया। इस प्रकार इन दोनों ही प्रकरणों का इस अधिकरण द्वारा न्यायनिर्णयन किया जा रहा है।

8. प्रार्थी को अपने साक्ष्य से यह प्रमाणित करना था कि विपक्षी प्रबंधन द्वारा कर्मकार श्री शैतान सिंह पुत्र श्री गोली सिंह रावत की दिनांक 30.06.2005 से मौखिक आदेश द्वारा की गई सेवा समाप्ति अवैध है। इस तथ्य को प्रमाणित करने हेतु प्रार्थी पक्ष ने कोई साक्ष्य प्रस्तुत नहीं की है। और प्रार्थी की ओर से कोई उपस्थित भी नहीं हुआ है। इन परिस्थितियों में इस अधिकरण का यह अधिमत है कि प्रार्थी की साक्ष्य के अभाव में यह प्रमाणित नहीं हो पाया है कि कर्मकार श्री शैतान सिंह रावत विपक्षी प्रबंधन के अधीन नियोजित कर्मचारी हो, तथा कथित रूप से 30.06.2005 से श्री शैतान सिंह रावत की की गई सेवा समाप्ति अवैध एवं अनुचित हो। इसलिये साक्ष्य के अभाव में प्रार्थी विपक्षीगण से कोई अनुतोष पाने का अधिकारी नहीं है।

9. भारत सरकार द्वारा संदर्भित एवं प्रार्थी पक्ष द्वारा निजी रूप से प्रस्तुत परिवाद का अधिनिर्णयन इसी प्रकार किया जाता है। अधिनिर्णय की एक प्रति प्रकरण सं. CGIT- 88/2015 में संलग्न की जावे।

10. अधिनिर्णय की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री जोगेंद्र पासवान, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 34/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/77/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1328.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Jogender Paswan, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/77/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 34/2012

Date of Passing Award- 18.10.2022

Between:

Shri Jogender Paswan,
S/o Shri Pyare Paswan,
R/o House No. 6478, Gali No. 34,
Sector-23, Sanjay Colony,
Faridabad

Versus

.... Workman

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava

...For the claimant

(A/R)

Shri Deepak Thukral

...For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/77/2011 (IR(DU) dated 05/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Jogender Paswan S/o Shri Pyare Paswan, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 04.05.1989. Initially his remuneration per month was Rs. 700/- and the same was increased from time to time and his last drawn salary per month was Rs. 2700/-. The workman had worked with the management continuously for 21 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take impress in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take impress (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work.

Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 and produced only one document which have been marked as WW1/1 which is a gate pass issued in the name of the claimant Jogender Paswan. On the basis of this document and his oral statement the claimant has asserted to prove that he was working for the management from 1989 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. WW1/M3 is another document filed by the claimant and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 21 years when the job entrusted to him was of perennial nature. For the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of denying that he was the employee of the contractor when there was no contract prevalent for engagement of daily rated workers. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act.,

Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing casual/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 1989 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence adduced by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence adduced in support of the claim the workman has relied upon the series of documents marked as WW1/1. This document though slender in evidentiary value have been relied upon by the claimant to show that during the period between 1989 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts are no way helpful in proving the employer and employee relationship. The claimant as MW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 1989 to 2010 proves that the claimant Jogender Paswan on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant thus, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wagger are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of

contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The claimant has stated that the plea of the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted. On the contrary the claimant has filed several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 1989 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 1989 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 21 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 1989 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 21 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more(**2006 SCC page 967, municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchahi Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not

sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi¹. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi¹. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 21 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधकs, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री सलीम, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 02/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/55/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1329.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Salim, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/55/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 02/2012

Date of Passing Award- 31.10.2022

Between:

Shri Salim,
S/o Shri Amirudin,
R/o House No. 94, Street No.1, Padam Nagar, Nahar Par,
Tigaon Road, Old Faridabad

.... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava
(A/R)

...For the claimant

Shri Deepak Thukral
(A/R)

...For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/55/2011 (IR(DU)) dated 02/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Salim S/o Shri Amirudin, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 02.03.2006. Initially his remuneration per month was Rs. 2500/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 04 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take impress in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take impress (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

3. Whether there existed relationship of employer and employee between the parties.
4. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.

5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2006 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 04 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL

from 2006 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2006 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable jointer for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2006 to 2010 proves that the claimant Salim on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable jointer/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove

the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2006 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2006 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 04 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2006 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 04 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F

of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more (**2006 SCC page 967, municipal counsel Sujapur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and

settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 04 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1330.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री विक्रमजीत, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 03/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/56/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1330.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Vikramajeet, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/56/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 03/2012

Date of Passing Award- 31.10.2022

Between:

Shri Vikramajeet,
S/o Shri Meba Lal,
R/o House No. 250, Gali No.2, Central Green,
Rahul colony, NIT, Faridabad

.... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava

...For the claimant

(A/R)

Shri Deepak Thukral

...For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/56/2011 (IR(DU) dated 02/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Vikramajeet S/o Shri Meba Lal, Ex-Cable Joiner w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joiner w.e.f 01.09.1998. Initially his remuneration per month was Rs. 1500/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 12 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement.

The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 1998 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status

Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 12 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 1998 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 1998 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 1998 to 2010 proves that the claimant Vikramajeet on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document

relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 1998 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 1998 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 12 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 1998 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 12 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workman has prayed for a relief of reinstatement simpliciter by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more(2006 SCC page 967, **municipal counsel Sujampur vs. Surinder Kumar** relied)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state Karnatak vs. Uma Devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 12 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री विनोद कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 45/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/37/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1331.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Vinod Kumar, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/37/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.**

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 45/2012

Date of Passing Award- 21.10.2022

Between:

Shri Vinod Kumar,
S/o Shri Suresh Chand,
R/o House No. DB-941, Near Manav Seva School,
Rathi Street, 27 Feet Road,
Dabua Colony, NIT,
Faridabad-

...Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava

...For the claimant

(A/R)

Shri Deepak Thukral

...For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/37/2011 (IR(DU) dated 13/01/2012 to this tribunal for adjudication to the following effect.

“Whether the contract awarded by GM BSNL, Faridabad is a sham contract in nature? Whether action taken by the management in terminating the service of Shri Vinod Kumar S/o Shri Suresh Chand, ex-cable jointer, W.e.f 23/08/2010 is just fair & legal? What relief the workman is entitled to and from which date?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Jointer/MDF and internet/Generator operator w.e.f 01.01.2000. Initially his remuneration per month was Rs. 1650/- and the same was increased from time to time and his last drawn salary per month was Rs. 3000/-. The workman had worked with the management continuously for ten years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable jointers, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The

management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 and produced the documents which have been marked in a series of document No.1 A to L containing various pages. The documents could not be exhibited being photocopies. These documents include various gate passes, challans, fault repair reports, money receipts and Gen Set repair reports containing the name of the claimant. In addition to this the claimant has also filed the photocopies of the complaint log book and the log book maintained for the Gen. Set, wherein in the remark column the name of the claimant and other workers standing in the same footing appears. On the basis of these documents the claimant has asserted to prove that he was working for the management from 2000 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant and those documents were marked as WW1/M1, WW1/M2 and WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. WW1/M3 is another document filed by the claimant and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 10 years when the job entrusted to him was of perennial nature. For the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of

denying that he was the employee of the contractor when there was no contract prevalent for engagement of daily rated workers. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing casual/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2000 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence adduced by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence adduced in support of the claim the workman has relied upon the series of documents marked as A to L. These are the documents though slender in evidentiary value have been relied upon by the claimant to show that during the period between 2000 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the gate pass, log book, money receipts etc. are no way helpful in proving the employer and employee relationship. The claimant as PW1 stated that he was working as a cable jointer for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers have been filed by the claimant and marked in series of H. These documents of the year 2006 to 2010 proves that the claimant Vinod Kumar on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer. Not only that the claimant has also filed several other documents which are the Gate Passes issued to the claimant by BSNL in the year 2008 and 2009, the vouchers showing payment the delivery challan fault repair report of the Gen. Sets and all these documents contain the name of the claimant as an employee of BSNL office at Faridabad.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant thus, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable jointer/MDF and internet/gen operator was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wagers are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case

of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The claimant has stated that the plea of the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted. On the contrary the claimant has filed several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. No contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2000 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory Thezhil Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and

clearly proves how during the relevant time period i.e. between 2000 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 10 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2000 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 10 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more (**2006 SCC page 967, municipal counsel Sujampur vs. Surinder Kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state Karnatak vs. Uma Devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma Devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with

regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wageer was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi¹. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi¹. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 10 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and

till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PARNITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1332.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री नकचंद, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 08/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/61/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 08/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Nakchand, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/61/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 08/2012

Date of Passing Award- 21.10.2022

Between:

Shri Nakchand,
S/o Shri Ram Tirath,
R/o House No. 155, Gali No.1,
Rahul Colony, Central Green,
NIT, Faridabad.

.... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava

...For the claimant

(A/R)

Shri Deepak Thukral

...For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/61/2011 (IR(DU)) dated 05/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Nakchand S/o Shri Ram Tirath, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 01.07.2002. Initially his remuneration per month was Rs. 1600/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for ten years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take impress in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take impress (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.

2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 and produced the documents which have been marked in a series of WW1/1 to WW1/6. These documents include various gate passes issued in the name of the claimant. On the basis of these documents the claimant has asserted to prove that he was working for the management from 2002 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant and those documents were marked as WW1/M1, WW1/M2 and WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. WW1/M3 is another document filed by the claimant and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimidated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 8 years when the job entrusted to him was of perennial nature. For the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of denying that he was the employee of the contractor when there was no contract prevalent for engagement of daily rated workers. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged where never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2002 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence adduced by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence adduced in support of the claim the workman has relied upon the series of documents marked as WW1/1 to WW1/6. These are the documents though slender in evidentiary value have been relied upon by the claimant to show that during the period between 2002 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the gate pass are no way helpful in proving the employer and employee relationship. The claimant as PW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2006 to 2010 proves that the claimant Nank Chand on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant thus, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wages are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The claimant has stated that the plea of the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted. On the contrary the claimant has filed several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2002 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory Thezhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2002 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 10 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2002 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 10 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workman has prayed for a relief of reinstatement simpliciter by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more (2006 SCC page 967, **municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue

was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 8 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री विजेंद्र कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 67/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/43/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1333.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 67/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Vijender Kumar, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/43/2011 - IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.**

Present: Smt. Pranita Mohanty, Presiding Officer
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 67/2012**Date of Passing Award- 20.10.2022****Between:**

Shri Vijender Kumar,
S/o Shri Nannu Ram,
R/o Village- Deha Gaon,
Naharpar,
Faridabad

.... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava
(A/R)

...For the claimant

Shri Deepak Thukral
(A/R)

...For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/43/2011 (IR(DU) dated 25/01/2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, Faridabad in terminating the services of Shri Vijender Kumar S/o Shri Nannu Ram, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 20.03.2006. Initially his remuneration per month was Rs. 1400/- and the same was increased from time to time and his last drawn salary per month was Rs. 3000/-. The workman had worked with the management continuously for 04 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The

officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was

working for the management from 2006 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 04 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2006 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2006 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2006 to 2010 proves that

the claimant Vijender Kumar on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wages are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2006 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2006 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 04 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2006 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 04 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It

is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon’ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon’ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workman has prayed for a relief of reinstatement simpliciter by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and thereby duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more (**2006 SCC page 967, municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon’ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon’ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchahi Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon’ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wage was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon’ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon’ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon’ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon’ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as

casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 04 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 नवम्बर, 2022

का.आ. 1334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री मोहम्मद हसीन, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 31/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/74/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1334 .—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Mohd. Hasin, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/74/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty, Presiding Officer
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 31/2012**Date of Passing Award- 20.10.2022****Between:**

Shri Mohd. Hasin,
S/o Shri Malikdin,
R/o House No. 66,
Rahul Colony, NIT,
Faridabad

.... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava
(A/R)

...For the claimant

Shri Deepak Thukral
(A/R)

...For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/74/2011 (IR(DU) dated 05/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Mohd. Hasin S/o Shri Malikdin, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 03.04.1997. Initially his remuneration per month was Rs. 1400/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 13 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take impress in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 1997 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these

labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 13 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 1997 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 1997 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 1997 to 2010 proves that the claimant Mohd. Hasin on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wages are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 1997 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble

Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 1997 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 13 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 1997 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 13 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to

prove that during a calendar year he had discharged work for 240 days more(2006 SCC page 967, **municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 13 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा) ,के प्रबंधन के संबद्ध नियोजकों और श्री मोहम्मद हसीन,कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 31/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/74/2011-आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1335.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Mohd. Hasin,Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022

[No. L-40012/74/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.**

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 31/2012

Date of Passing Award- 20.10.2022

Between:

Shri Mohd. Hasin,
S/o Shri Malikdin,
R/o House No. 66,
Rahul Colony, NIT,
Faridabad

.... Workman

Versus

The General Manager,

Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:

Shri S.P. Srivastava
(A/R)

...For the claimant

Shri Deepak Thukral
(A/R)

...For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/74/2011 (IR(DU) dated 05/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Mohd. Hasin S/o Shri Malikdin, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 03.04.1997. Initially his remuneration per month was Rs. 1400/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 13 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work.

Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 1997 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 13 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the

management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing casual/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 1997 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 1997 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 1997 to 2010 proves that the claimant Mohd. Hasin on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wages are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 1997 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 1997 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 13 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got

annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 1997 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 13 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

"Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more(**2006 SCC page 967, Municipal Counsel Sujampur vs. Surinder Kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of State Karnatak vs. Uma Devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma Devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

"32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status

and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi¹. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi¹. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon’ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon’ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon’ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon’ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 13 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री नरेंद्र कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 56/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/33/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1336.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Narender Kumar, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/33/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.**

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 56/2012**Date of Passing Award- 11.10.2022****Between:**

Shri Narender Kumar,
S/o Shri Jhokhu,
R/o House No. 242, Gali No.2,
Rahul Colony, NIT,
Faridabad

Versus

.... Workman

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava
(A/R)

...For the claimant

Shri Deepak Thukral
(A/R)

...For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/33/2011 (IR(DU) dated 17/01/2012 to this tribunal for adjudication to the following effect.

“Whether the contract awarded by G M BSNL, Faridabad is a sham in nature? Whether action taken by the management in terminating the service of Shri Narender Kumar S/o Shri Jhokhu, Ex-Cable Joinder w.e.f 23.08.2010, is just fair and legal? If not to what relief the workman is entitled to and from which date?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 10.03.1998. Initially his remuneration per month was Rs. 1500/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 12 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 and produced only one document which have been marked as WW1/1 which is a gate pass issued in the name of the claimant Narender Kumar. On the basis of this document and his oral statement the claimant has asserted to prove that he was working for the management from 1998 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. WW1/M3 is another document filed by the claimant and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 12 years when the job entrusted to him was of perennial nature. For the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of denying that he was the employee of the contractor when there was no contract prevalent for engagement of daily rated workers. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such

there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 1998 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence adduced by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence adduced in support of the claim the workman has relied upon the series of documents marked as WW1/1. This document though slender in evidentiary value have been relied upon by the claimant to show that during the period between 1998 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts are no way helpful in proving the employer and employee relationship. The claimant as MW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 1998 to 2010 proves that the claimant Narender Kumar on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant thus, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wagger are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The claimant has stated that the plea of the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and

difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted. On the contrary the claimant has filed several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which is turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 1998 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 1998 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 12 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 1998 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 12 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more(2006 SCC page 967, **municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years

with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon’ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon’ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon’ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon’ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 12 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री जगदीश, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 61/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/36/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1337.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Jagdish, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/36/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 61/2012

Date of Passing Award- 12.10.2022

Between:

Shri Jagdish,
S/o Shri Shyam Bahadur,
R/o House No. RC-79,
Rahul Colony,
NIT, Faridabad

Versus

.... Workman

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava

...For the claimant

(A/R)

Shri Deepak Thukral

...For the claimant

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/36/2011 (IR(DU)) dated 25/01/2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Jagdish S/o Shri Shyam Bahadur, Ex-Cable Joiner w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joiner w.e.f 05.01.2004. Initially his remuneration per month was Rs. 1700/- and the same was increased from time to time and his last drawn salary per month was Rs. 3200/-. The workman had worked with the management continuously for six years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials

of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 and produced the documents which have been marked in a series of WW1/1 to WW1/6. These documents include various gate passes issued in the name of the claimant. On the basis of these documents the claimant has asserted to prove that he was working for the management from 2004 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant and those documents were marked as WW1/M1, WW1/M2 and WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. WW1/M3 is another document filed by the claimant and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 6 years when the job entrusted to him was of perennial nature. For the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of denying that he was the employee of the contractor when there was no contract prevalent for engagement of daily rated workers. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged where never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2004 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence adduced by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence adduced in support of the claim the workman has relied upon the series of documents marked as WW1/1 to WW1/6. These are the documents though slender in evidentiary value have been relied upon by the claimant to show that during the period between 2004 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period

of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the gate pass are no way helpful in proving the employer and employee relationship. The claimant as PW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2004 to 2010 proves that the claimant Jagdish on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant thus, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wages are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The claimant has stated that the plea of the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted. On the contrary the claimant has filed several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws

light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2004 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory Thezhil Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2004 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 6 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2004 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 6 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been given one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workman has prayed for a relief of reinstatement simpliciter by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more (2006 SCC page 967, **municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchhari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer

rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon’ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 6 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1338.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा) ,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री मुन्ना लाल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 38/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/81/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1338.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Munna Lal, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/81/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 38/2012

Date of Passing Award- 10.10.2022

Between:

Shri Munna Lal,
S/o Shri Ram Tirath,
R/o House No. 116, Gali No.1,
Rahul Colony, NIT,
Faridabad

... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

....Management

Appearances:-

Shri S.P. Srivastava
(A/R)

....For the claimant

Shri Deepak Thukral
(A/R)

....For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/81/2011 (IR(DU)) dated 05/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Munna Lal S/o Shri Ram Tirath, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 01.03.1998. Initially his remuneration per month was Rs. 1500/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 22 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential

benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take impress in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take impress (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 and produced only one document which have been marked as WW1/1 which is a gate pass issued in the name of the claimant Munna Lal on 14.05.2010. On the basis of this document and his oral statement the claimant has asserted to prove that he was working for the management from 1998 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2,

WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. WW1/M3 is another document filed by the claimant and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimidated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 10 years when the job entrusted to him was of perennial nature. For the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of denying that he was the employee of the contractor when there was no contract prevalent for engagement of daily rated workers. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 1998 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence adduced by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence adduced in support of the claim the workman has relied upon the series of documents marked as WW1/1. This document though slender in evidentiary value have been relied upon by the claimant to show that during the period between 1998 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts are no way helpful in proving the employer and employee relationship. The claimant as MW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2006 to 2010 proves that the claimant Munna Lal on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant thus, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the

contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wages are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The claimant has stated that the plea of the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted. On the contrary the claimant has filed several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 1996 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2000 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 22 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2000 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 10 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workman has prayed for a relief of reinstatement simpliciter by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more (2006 SCC page 967, **municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual

workers and continued to work for 15 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री सुभाष, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 04/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/57/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवसर सचिव

New Delhi, the 11th December, 2022

S.O. 1339.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Subhash, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/57/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 04/2012

Date of Passing Award- 11/10/2022

Between:

Shri Subhash,
S/o Shri Nand Lal,
R/o House No. 842,
Rahul Colony, NIT,
Faridabad

.... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava

....For the claimant

(A/R)

Shri Deepak Thukral

....For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/57/2011 (IR(DU)) dated 02/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Subhash S/o Shri Nand Lal, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 10.01.2006. Initially his remuneration per month was Rs. 2500/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 4 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take implest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take implest (advanced against some urgent work for which normal procedure like bidding,

inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 and produced the documents which have been marked in a series of WW1/1 to WW1/2. These documents include various gate passes issued in the name of the claimant. On the basis of these documents the claimant has asserted to prove that he was working for the management from 2006 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant and those documents were marked as WW1/M1, WW1/M2 and WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. WW1/M3 is another document filed by the claimant and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimidated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 8 years when the job entrusted to him was of perennial nature. For the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of denying that he was the employee of the contractor when there was no contract prevalent for engagement of daily rated workers. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management

under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing casual/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2006 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence adduced by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence adduced in support of the claim the workman has relied upon the series of documents marked as WW1/1 to WW1/2. These are the documents though slender in evidentiary value have been relied upon by the claimant to show that during the period between 2006 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the gate pass are no way helpful in proving the employer and employee relationship. The claimant as PW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2006 to 2010 proves that the claimant Subhash on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant thus, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The claimant has stated that the plea of the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted. On the contrary the claimant has filed several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which is turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2006 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory Thezhil Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2006 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 4 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed

and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2006 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 10 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more(**2006 SCC page 967, municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchhari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing

badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi¹. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Uma Devi¹. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon’ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon’ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon’ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon’ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 4 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1340.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री संत लाल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 60/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/34/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1340.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Sant Lal, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/34/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 60/2012

Date of Passing Award- 31.10.2022

Between:

Shri Sant Lal,
S/o Late Shri Mohan Lal,
R/o House No. 258, Gali No.3,
Rahul colony, NIT, Faridabad.

.... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

.... Management

Appearances:-

Shri S.P. Srivastava

....For the claimant

(A/R)

Shri Deepak Thukral

... For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/34/2011 (IR(DU)) dated 25.01.2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Sant Lal S/o Late Shri Mohan Lal, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 01.03.2001. Initially his remuneration per month was Rs. 1500/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 09 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take impress in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take impress (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.

6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2001 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 09 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2001 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard

to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2001 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2001 to 2010 proves that the claimant Sant Lal on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joiner/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the

claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2001 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2001 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 09 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2001 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 09 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the

management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workman has prayed for a relief of reinstatement simpliciter by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more (**2006 SCC page 967, municipal counsel Sujampur vs. surinder kumar relied**)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page 1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wage was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi¹. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi¹. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and

settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 09 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री किशन शर्मा, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 09/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/62/2011- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1341.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Kishan Sharma, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 40012/62/2011- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 09/2012

Date of Passing Award- 31.10.2022

Between:

Shri Kishan Sharma,
S/o Shri Harish Chand Sharma,
R/o House No. 175, Gali No.1
Rahul colony, NIT, Faridabad

.... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad

...Management

Appearances:-

Shri S.P. Srivastava

...For the claimant

(A/R)

Shri Deepak Thukral

.... For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/62/2011 (IR(DU) dated 05/12/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, in terminating the services of Shri Kishan Sharma S/o Shri Harish Chand Sharma, Ex-Cable Joinder w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?”

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 10.06.2002. Initially his remuneration per month was Rs. 1600/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 08 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential

benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take impress in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joiners, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take impress (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2002 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the

original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 08 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2002 to 2010 as a cable joiner/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2002 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joiner for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2002 to 2010 proves that the claimant Kishan Sharma on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor

who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wages are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172**, he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2002 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary

contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2002 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 08 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2002 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 08 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a

contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workman has prayed for a relief of reinstatement simpliciter by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more (2006 SCC page 967, **Municipal Counsel Sujampur vs. Surinder Kumar** relied)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of State Karnatak vs. Uma Devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma Devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wagger was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 08 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer.

नई दिल्ली, 11 दिसम्बर, 2022

का.आ. 1342.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एनसीपीएस, एनटीपीसी लिमिटेड, गौतम बुद्ध नगर (उ.प्र.), के प्रबंधन के संबद्ध नियोजकों और श्री बनवारी लाल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 105/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-42011/80/2010-आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 11th December, 2022

S.O. 1342.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 105/2011) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, NCPS, NTPC Ltd, Gautam Buddh Nagar (U.P) and Shri Banwari Lal, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 42011/80/2010 - IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 105/2011

Date of Passing Award- 09.11.2022

Between:

Shri Banwari Lal,
S/o Shri Khyali Ram,
C/o Village & Post Office:-
Khan Alampur, Aligarh U.P

.... Workman

Versus

The General Manager,
NCPS, NTPC Ltd.,
Mechanical Maintenance Department,
Vidyut Nagar, Dadri,
Gautam Buddh Nagar (U.P)

... Management

Appearances:-

Shri B K Prasad

For the claimant

(A/R)

Shri Rajesh Mahindru

For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of NCPS, NTPC Ltd., and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/80/2010 (IR(DU)) dated 12/10/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the Management of NTPC, Dadri, in terminating the services of workman Shri Banwari Lal, w.e.f 18/04/1994 is illegal and unjustified. If so to what relief he is entitled to?”

As per the claim statement the claimant was working as the permanent employee with the management in the post of helper since 10.09.1991. With an unblemished track record and no scope was ever given by him for raising any complaint by the employer. On 18.04.1994 when he reported for a duty the management did not allow him to perform the duty and no reason was assigned for such refusal. When he demanded a written order of termination of service the same was not given. On 29.04.1994 the claimant gave a written request to the management to allow him to perform duty. Neither he was allowed to perform duty nor any reply to his letter was given. The claimant for sometime visited the office of the management with request to allow him to perform the duty but his request was never accepted. He has further stated in the claim petition that the management illegally and unjustifiably terminated his service. Before the termination no domestic inquiry was conducted. No termination notice or notice pay was paid to him. From 10.09.1991 to 17.04.1994 he had worked continuously for the management NTPC and in the preceding year of termination of his service had worked for 240 days or more. Thereby the claimant challenged the termination as illegal. Since, the management did not pay any heed to his request for reinstatement he raised a dispute before labour commissioner Ghaziabad and on failure of conciliation the appropriate government referred the matter to this tribunal for adjudication on the legality and justification of the termination of his service.

Being noticed the management NTPC appeared and filed written statement challenging the stand of the claimant. At the outset it has been pleaded that the claim is barred by limitation for being raised 18 years after the alleged termination. It has also been stated that NTPC is a government of India Enterprise and never engages contract workers directly. For execution of certain work the contract are awarded to the contractors who engage their own men to execute the contract and make payment to them in accordance to the Contract Labour Regulation and Abolition Act 1970. So far as this claimant is concerned he was engaged by one of the contractor M/s Bachhil Sons and his service was terminated by the said contractor. The claimant Banwari Lal had raised a dispute before the Assistant Labour Commissioner Ghaziabad which was registered as CP No. 467/1994. In that dispute the claimant had added M/s NTPC Dadri and M/s Bachhil and Sons as opposite party. Having realized the mistake he withdrew the matter and filed another application which was registered as CP No. 814 of 1994. In the subsequent application the claimant cleverly deleted the name of the contractor. The Assistant Labour Commissioner Ghaziabad took up the matter for conciliation and since the attempt failed the matter was referred to the Labour Court No. 1 Ghaziabad where it was registered as ADJ Case no. 133 of 1996. The management NTPC filed written statement challenging the jurisdiction of that court. Ultimately the labour court disposed of the matter for want of jurisdiction and appropriate government again referred the matter to this tribunal in a mechanical manner for adjudication on the justification of the alleged termination.

The management NTPC has further stated that there is no employer and employee relationship between the claimant and NTPC and the claimant was never appointed nor terminated by NTPC. He was infact the employee of the contractor M/s Bachhil and Sons and the claimant has made some false allegation that he was working for the management and the later refused to take him on duty since 18.04.1994. The management has denied the stand of the claimant that he asked for a written order of termination and had sent a written request to

take him back to service. The strong stand of the management is that it being a Government of India Enterprise has its own procedure of recruitment and never engages temporary or contractual employees. The eligible contractor is given the contract to execute a specific work and the persons engaged by the said contractor are not the employees of the NTPC and for that reason the claim petition is false and not maintainable. The claimant filed replication denying the stand taken by the management.

On these rival pleadings the following issues are framed for adjudication.

ISSUES

1. Whether delay of 18 years in making reference order frustrates claim of Shri Banwari Lal?
2. Whether there existed any relationship of employer and employee between the parties.
3. As in terms of reference.

The claimant examined himself as WW1 and proved the number of documents which have been marked in a series of WW1/1 to WW1/75. These documents include the claim filed before the labour commissioner a number of gate passes issued by NTPC for entry of the claimant to the premises of the management material issue slips reflecting the name of the claimant Banwari Lal the circular with regard to the pay revision of the employees of NTPC the document marked as WW1/17 to WW1/23 which are vouchers with regard to repair and maintenance of the machineries in which at some places the name of the claimant is reflected the order passed by the Labour Court Ghaziabad a number of photocopies of the attendance register of NTPC in which the name of the claimant appears.

Similarly the management examined one Anil Kumar Chawla, DGM HR NTPC as MW1 one Umesh Kumar DGM HR as MW2 and one Kalyan Singh Bachhil as MW3 who was summoned as a witness by the tribunal. The management has filed the registration certificate of the management for engagement of contractors as MW2/2 a letter written by the contractor Bachhil and sons describing the claimant as its employee which has been marked as MW1/1 in addition to the same the management has also filed the photocopies of the contract awarded to the M/s Bachhil and sons and the annual contract labour report submitted by NTPC to the registering and licensing officer in which the name of the claimant doesn't find place. The management has also filed a list of the contractors engaged at different point of time.

At the outset of the argument the Ld. A/R for the management submitted that in view of the denial of employer and employee relationship by the management, heavy burden lies on the claimant to prove the employer and employee relationship. Not only that the burden also lies on him to prove that he had worked for 240 days in the preceding calendar year of alleged termination making it obligatory for the employer to comply with the provisions of section 25F of the Id Act. He further submitted that in this case the claimant has miserably failed to discharge any of the burdens. Moreover NTPC is a government of India Enterprise and never engages contractual or temporary workers. It has been registered under the Contract Labour (R & A) Act and for execution of certain work it engages contractors and files annual return of the contractual workers or contractors engaged. The said contractor in order to execute the work awarded engages his own men and receives payment from NTPC by raising bills. The persons so engaged though work in the premises of NTPC are no way related to NTPC as its employees. The claim as advanced by the claimant if would be allowed, the same shall amount to a back door entry and shall stand opposed to the policy of public employment. The Ld. A/R for the management thus argued for dismissal of the claim.

On behalf of the claimant emphasis has been given on the documents filed and exhibited as WW1/1 to WW1/77. These documents are all photocopies of the vouchers material receipt order, gate passes and attendance register. The Ld. A/R for the claimant submitted that the claimant is a poor worker fighting the litigation against the mighty employer. All the original documents are in possession of the management and the application filed by the claimant seeking indulgence of the Tribunal for production of the documents could not yield in result as the management denied the possession of the same. Mr. B K Prasad the Ld. A/R for the claimant argued that all these documents were created during an undisputed point of time and bear the letter head of NTPC. Hence those documents cannot be viewed with suspicion. Citing the judgments of the Hon'ble Supreme Court in the case of **Hussain Bhai vs. The Alath Factory Tezhilali Union and others AIR 1978 SC 1410** and in the case of **International Airport Authority of India vs. International Air Cargo Workers Union and another 2009(13) SCC 374** he submitted that the presence of intermediate contractors with whom the workers had immediate or direct relationship is of no consequence when, on lifting the veil or looking at the conspectus of factors governing the employment the tribunal finds that the real employer is the management and not the intermediate contractor. He thus, argued that the tribunal has

to carefully examine the documentary evidence on record and dislodge the stand taken by the management.

On the other hand the Ld. A/R for the management while placing reliance in the case of **workmen of Nilgiri Cooperative Marketing Society Limited vs. State of Tamilnadu AIR 2004 SC 1639** submitted that in the said judgment it has been held that the person who sets up a plea of existence of relationship of employer and employee the burden would be on him to prove the same. He also argued citing the judgment of **Ashok Kumar vs. State Decided by the Hon'ble Supreme Court in WPC No. 9438-42 of 2004** that when no reference is made to the Labour Court for determining whether the contract was sham or camouflage, the Labour Court cannot enter into this issue. His argument that mere filing of affidavit or self serving statement by the claimant will not suffice in the matter of discharging the burden has been supported by the judgment of Hon'ble Supreme Court in the case of **Krishna Bhagya Jala Nigam Limited vs. Moh. Rafi (2009)-II SCC 522**.

FINDINGS

ISSUE NO.1

Admittedly this dispute has been raised 18 years after the alleged termination of service of the claimant. The Ld. A/R for the management while drawing attention to the provisions of section 2A of the ID Act submitted that any application challenging the dismissal invoking the provision of section 2A(2) is required to be filed before expiry of 3 years from the date of such discharge dismissal or retrenchment. Though, no time limit has been prescribed for raising a dispute u/s 2A(1), the same should have been raised within a reasonable time period. In this case the dispute before this tribunal came up after 18 years and as such it is hopelessly barred by time and on that ground alone need to be dismissed. In reply the Ld. A/R for the claimant submitted that when the statute does not prescribe any limitation it will be prejudicial to the claimant to interpret the matter in a manner not provided under the statute.

Admittedly the claimant soon after his alleged termination had raised the dispute before the Labour Commissioner where conciliation was held. On failure of conciliation the matter was referred to the Labour Court Ghaziabad. The management since raised dispute with regard to the jurisdiction of that court, an order was passed dismissing the prayer for want of jurisdiction and thereafter the appropriate government referred the matter to this tribunal. Thus, an unreasonable delay occurred before the matter came to be listed here. For the circumstances it cannot be held that the delay in bringing the litigation for adjudication is attributable to the claimant and the claim is liable to be dismissed. The objection raised by the management with regard to the limitation is not accepted and this issue is accordingly answered in favour of the claimant and against the management.

ISSUE No.2.

This is the most important issue for adjudication in this proceeding. In order to decide whether the service of the claimant was terminated illegally by the management, it is to be decided at the first instance if the claimant was working as a helper in the management from 10.09.1991 to 18.04.1994 and there exists any employer and employee relationship between them. The claimant has pleaded and laid evidence that he was working as a helper in the premises of the management and attending the works assigned to him. To support the same he has filed photocopies of the several gate passes issued by NTPC for his entry into the premises of the management and material issue slips reflecting his name, photocopies of the attendance register etc. the management took a stand that the claimant had never worked in the premises of the management but was serving as a person employed by the contractor to whom the contract was awarded. The management has examined MW3 the contractor through whom the claimant was employed. Not only that the management has also produced the copies of the contracts executed between it and different contractors and the return filed under the Contract Labour Act. Thus, from the evidence on facts, it is to be ascertained if at all the claimant was working as a helper for the management. The claimant as WW1 has fully supported the averments of the claim statement and added that during this period he had worked for 240 days in a calendar year. The Ld. A/R for the management raised dispute on the admissibility of the documents filed by the claimant to prove the employer and employee relationship between the parties. He also pointed out to the evidence of the claimant recorded during cross examination wherein the claimant has admitted that he was not enrolled in the Employment Exchange. He has also admitted that no employee no. was issued by the management to him as in the case of the permanent employees of NTPC. He has also admitted that no pay slip or permanent identity card containing permanent employee No. was ever issued to him. The Ld. A/R for the management pointed out that in the cross examination the claimant has admitted in clear terms that he was working with contractor Bachhil and sons and does not have any proof to show that any salary was ever paid to him by NTPC. The Ld. A/R for the management while pointing to the evidence of the management witnesses submitted that an application was filed by

the claimant for a direction to the management for production of original documents in possession of the management which could have thrown light on the issue. But the management denied to have possession of the documents leading to filing of secondary evidence. He also argued that the documents like attendance register, gate pass etc were created during an undisputed point of time and as such those cannot be brushed aside.

In this case the attendance register filed by the claimant shows that against some of the employees the employee code Nos. have been mentioned but as against the name of the claimant which finds place at the bottom of the page there is no mention of the employee no. Taking advantage of the same the Ld. A/R for the management argued that the attendance register has been manipulated and the photocopies have been taken to mislead this tribunal.

The law is well settled that the burden of proving employer and employee relationship always rests on the person who asserts the same. In the case of **Ram Singh and others vs. Union Territory of Chandigarh and others reported in (2004)1SCC page 126** it has been held that for determination of employer and employee relationship the factors to be considered inter alia are (i) control (ii) integration (iii) power of appointment and dismissal (iv) liability to pay remuneration (v) liability to organize the work (vi) nature of mutual obligation etc. The factual matrix of the present dispute as evident from the oral and documentary evidence is that no advertisement was issued for the appointment of the claimant nor any appointment letter was issued. Similarly there is no document available on record to presume that the management was exercising control for integration of the work allegedly done by the claimant. There is also no material on record that the claimant was getting monthly remuneration like other employees of the management and he was signing the attendance register in acknowledgment of his daily attendance of duty. The attendance register filed by the claimant lacks credibility since though a photocopy the same do not contain any impression of the seal of the management or signature of any of its employees. It appears to be a self serving document wherein only the name of the claimant finds place without the employee no. or other details. The documents like gate pass, only proves the entry of the claimant to the premises of NTPC but not his status as an employee of the later. The mutual obligation in the nature of deducting PF subscription and extension of other benefits is no way evident from documents filed by the parties. Production of the photocopies of the gate pass, only proves that he was carrying out some work assigned to him in the premises of the management for which as stated by the management witness that the contracts were being awarded to the contractors who was engaging his own men to execute the work. This finds support from the statement of the claimant elicited during cross examination that no appointment letter, salary slip was ever issued and he was engaged through the contractor. On behalf of the management the contractor has been examined as MW3 and a letter written by him to the management acknowledging the claimant as a person employed by him has been filed as MW1/1. Thus, from the totality of the evidence it is held that the claimant has failed to discharge the burden of proving the employer and employee relationship which is accepted in view of the stand taken by the management that the later being a Government of India enterprise never engages contractual workers. This issue is accordingly decided against the claimant.

ISSUE No.3

The grievance of the claimant is that he had worked for the management for 3 years but the management without following the procedure laid down under law illegally terminated his service. The law is again well settled that when the workman successfully establishes his relationship as an employee of the management, it is to be seen if the termination was made illegally. Reference can be made to section 25F of the ID Act which precisely speaks that no workman employed in any industry who has been in continues service for not less than one year shall be retrenched unless and until the said workman has been given one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken stand that no one month notice, notice pay, or compensation was required to be paid since, there was no employer and employee relationship. The claimant has alleged non compliance of the mandatory provision of section 25F of the Id Act and the management has admitted non compliance of the same. But for the decision arrived while deciding issue No.1 and considering the fact that there exists no employer and employee relationship between the parties it cannot be held that the service of the claimant was illegally terminated by the management and at the time of termination the provisions of section 25F were not complied. This issue is also decided against the claimant.

In view of the findings arrived in respect of issue No.2 and 3 holding that the claimant was not an employee of the management and his service was not illegally terminated it is held that the claimant is not entitled to the relief sought for. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2022

का.आ. 1343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड वेस्टर्न बैंक लिमिटेड प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 104/2007) को प्रकाशित करती है।

[सं. एल-12012/161/2006-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 12th December, 2022

S.O. 1343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 104/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of The United Western Bank Ltd, and their workmen.

[No. L-12012/161/2006– IR(B-1)]

A.K YADAV, Under Secy.

ANNEXURE

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

No. CGIT/LC/R/104/2007

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

Shri Pramod Kumar Khadse,
22, Jyoti Nagar, Khandwa(MP)
Khandwa(MP)

.....Workman

Versus

The Assistant General Manager,
The United Western Bank Ltd.,
172/4, Raviwar Peth,
Shrivaji Circle,
Satara(Maharashtra)-415 001

...Management

AWARD

(Passed on 19-7-22) .)

As per letter dated 10/10/2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/161-2006-IR(B-1). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager, the United Western Bank Ltd. Satara in terminating the services of Shri Pramod Kumar Khadse w.e.f. 3-2-05 is justified? if not, to what relief the workman is entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was appointed as a clerk by the management in Khandwa Branch of the Bank after a telephonic interview on 16-9-2002. His services were terminated by the Bank Management on 3-2-2005 without giving him any prior notice or compensation. He has continuously worked during the period for more than 240 days in every year including the year preceding the date of his termination. He has been discharging duties of clerk which included preparation of draft, entries in register, preparation of pay slips and making entries in the pay slip registers, making entries in the transfer scroll, preparing draft advises, writing cheque books, updating the ledger and saving account and many other works allotted to him from time to time by the Management. The workman has further alleged that the workman engaged after him were continued in service but his services were discontinued. According to the workman, this action of management is in violation of Section 25F and 25G of the Industrial Disputes Act, 1947 (hereinafter referred to as the word Act). Accordingly the workman has prayed for his reinstatement with all back wages and benefits holding his termination against law. The workman has filed photocopy documents admitted by the Management marked as Exhibit W-1 to W-5.

3. According to the management, the United Western Bank Ltd. Has now merged with IDBI Bank. The workman was engaged by the erstwhile United Western Bank Ltd. purely on casual and intermittent basis not following the proper selection process as per rules and procedures. The United Western Bank has since been amalgamated with the IDBI Bank with notification of Ministry of Finance Department of Economic Affairs dated 30-9-2006. The Management admits that the workman was engaged as a casual clerk in Khandwa Branch of United Western Bank for the period 16-9-2002 to 30-11-2002 but without approval of Competent Authority. The Management has denied the claim of the workman that he worked continuously for more than 240 days in any year including the year preceding the date of his termination. Accordingly the Management has prayed that the reference be answered against the workman.

4. The workman has examined himself as witness and has been cross-examined. The Management filed affidavit of three witnesses. It could not produce any one witness for cross-examination. I have heard arguments of Advocate Shri Ashok Shrivastava, learned counsel for the workman and Shri R.K.Soni, learned counsel for the Management. I have gone through the record as well.

5. The following issue arises for determination in the case in hand, on perusal of record, in the light of rival arguments:-

- (1) Whether the workman has successfully proved his continuous engagement for 240 days and more in every year including the year preceding the date of his termination.?
- (2) Whether the termination of the workman is against Section 25F and 25G of the Act?
- (3) Whether the workman is entitled to any relief.?

6. ISSUE NO.1:-

Before proceeding, Section 25B of the Act is being reproduced as follows:-

Section 25 B:-

Definition of continuous service.-

(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 authorised 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 of 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) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

7. The case of the workman is that he was appointed by management of United Western Bank Ltd on 16-9-2002 as a clerk and has been discharging his duties as a clerk till 3-2-2005 when his services terminated. The Management has taken a case that firstly he was a casual worker. Secondly he was appointed against rules without following any recruitment process and that he never completed 240 days in continuous service in any year including the year preceding the date of his termination.

8. The workman has filed Exhibit W1 to W5, these are photocopy documents of Bank admitted by the management. Exhibit W-1 is the application by Bank customer given to the Bank for initiation of advise with respect to draft on date 6-11-2003. There is a direction of Management to the workman to issue duplicate advise. Exhibit W-2 is another application of 5-8-2004 filed by the customer before the Bank for initial advise in respect of the draft. The Bank Manager has made endorsement to the workman to issue the duplication. Exhibit W-3, W-4, and W-5 are the supplementary pay bills regarding the workman for the month of February-March-April-2003 showing his salary basic Rs.2020/- + Dearness Allowance. This documents has also been admitted by the management. These documents corroborate the case of the workman and his affidavit on oath in the form of Examination-in-Chief that firstly he was engaged by the Management and secondly he worked in the year 2003-04. The workman further states in his statement on oath that he has continuously worked for more than 240 days in every year. He has been cross-examined by Management. There is nothing in his cross-examination to discredit him on this point. He has further proved Exhibit W-6, an application by a customer sent to Manager requesting to close his account wherein the Manager has made an endorsement to the workman. Exhibit W-7, W-8, W-9, W-10 and W-11 are applications by different account holders filed before the bank either for issuing of cheque book or closing an account in which the Management has directed the workman to do the needful. These documents raised from 7-5-2004 to 22-11-2004. On the other hand, though the Management has filed affidavit of three witnesses as their examination-in-chief but has failed to produce any of them for cross-examination, hence their affidavit cannot be read in evidence in support of Management. In these facts and circumstances, the case of the workman appears more probable and it is held proved that the workman was firstly engaged by the management and has completed 240 days or more in continuous service of management in every year including the date of his termination. **Issue No.1 is answered accordingly.**

9. ISSUE NO.2:-

According to the workman, his dis-engagement is violative of Section 25F and 25G of the Act. These two provisions are being reproduced as follows:-

25F. 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: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[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 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

10. It is the case of the workman that his services were terminated without any notice or compensation. The management does not specifically dispute this allegation nor is there any evidence to rebut this allegation of workman. The workman has corroborated his this allegation in his evidence, hence his termination is held bad in law being violative of Section 25 G of the Act.

11. As regards the second ground i.e. violation of Section 25G, there is no evidence produced by the workman with regard to the fact that an employee junior to him has been continued in service, where as he has been terminated, hence the termination of service of workman is held not in violation of Section 25G of the Act. **Issue No.2 is answered accordingly.**

12. ISSUE NO.3:-

In the light of the findings recorded above, the question arises as to what relief the workman is entitled to. The workman was engaged by earlier management though the new Management has under taken all the liabilities of the earlier Management in the amalgamation scheme. Learned counsel for the workman has referred to decision of Hon'ble High Court of M.P. in **Sanjay Kumar Vs. Chief Executive Officer, Janpad Panchayat** (2010) 3 MPLJ 457. IN this case, holding the termination of workman in violation of Section 25F the workman was held entitled to reinstatement to 50% back wages.

In another case **Superintendent Engineer Twad Board Vs. M. Natesan**(2019)6 SCC 509 holding the termination of workman in violation of Section 25F of the Act. He was reinstated with 50% back wages.

The Management has referred to judgement of Hon'ble the Apex Court in the case of **State of Rajasthan Vs. Dayalal and Others** , AIR(2011) SC 1193 in support of his arguments that since the Management has changed , the workman the workman being a daily wager and was not appointed as per rules and procedures of recruitment, his reinstatement will not meet the ends of justice as it will deprive some suitable candidates from employment.

The Management has further referred to decision of Hon'ble the Apex Court in the case of **Union of India and Others Vs. Iimo Devi and Others** AIR(2021) SC 4855 and **Secretary, State of Karnataka and Others Vs. Umadevi and Others** , AIR(2006) SC 1806 on this point.

13. Keeping in view the principle of law laid down in the decision referred to above, I am of the considered view that reinstatement of the workman will not be a proper relief to be granted to him in the light of the facts and circumstances, in the case in hand. Rather a lump sum compensation of Rs.1,00,000/- (Rupees one lakh only) as full and final settlement of all the claims of the workman including the cost of litigation will meets the ends of justice . Accordingly, the workman is held entitled to compensation of Rs.1,00,000/-(one lakh) to be paid to him within 30 days from the date of notification of the Award in official gazette, failing which interest @ 6% p.a. from the date of notification till payment. **Issue No. 3 is answered accordingly.**

14. On the basis of the above discussion, following award is passed:-

- A. **The action of the management of Assistant General Manager, the United Western Bank Ltd. Satara in terminating the services of Shri Pramod Kumar Khadse w.e.f. 3-2-05 is held to be unjustified.**
- B. **The workman is held entitled to lump sum compensation of Rs.1,00,000/-(one lakh) in full and final settlement of all his dues to be paid to him within 30 days from the date of notification of the Award in official gazette, failing which interest @ 6% p.a. from the date of notification till payment.**

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 19/7/2022

नई दिल्ली, 13 दिसम्बर, 2022

का.आ. 1344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंध तंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 229/97) को प्रकाशित करती है !

[सं. एल-41012/115/96-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 13th December, 2022

S.O. 1344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.229/97) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen.

[No. L- 41012/115/96- IR(B-1)]

A.K. YADAV, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/229/97

Present: P.K. SRIVASTAVA H.J.S..(Retd)

Shri Vijay Kumar
S/o Shri Mangalchand,
Nayagaon, Mirzapur
Tehsil Gangapur,
Village Sawai Madhopur
Rajasthan

...Workman

Versus

The Senior Divisional Engineer(Diesel)
Western Railway,
Ratlam(M.P.)

...Management

AWARD

(Passed on this 10-11-2022)

As per letter dated 30/7/1997 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/115/96-IR(B) The dispute under reference relates to:

“Whether the action of the management Senior Divisional Engineer(Diesel), West Railway Ratlam in terminating the services of Shri Vijay Kumar Mangalchand is legal and justified? If not to what relief the workman is entitled?” .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he first joined as a Diesel Mechanic on 19-2-1983 at Diesel Shed, Western Railway, Gangapur City(Rajasthan). His services were terminated for unauthorised absence from 1-11-1991 to 23-12-1991. He was issued a charge sheet/Memo dated 9-1-1992 regarding his unauthorized absence. According to him he was sick during this period. He reported before Divisional Medical Officer , Gangapur City who after medical examination, found him unfit for duty and took him in sick list issuing a proper sickness certificate, advising him to take a proper bed rest. Since the Railway Hospital was far off from his residence, he received treatment from a private Doctor. He had been dispatching necessary medical certificate regularly to the D.F.O. Diesel Shed, Ratlam by U.P.C. as per rules. He was wrongly held guilty for the charge of unauthorized absence during the Inquiry which was against Rules. The punishment is also disproportionate to the charges. Accordingly, he has prayed that holding his termination bad in law, he be entitled to be reinstated with all back wages and benefits.

3. The case of the Management as put in their written statement of defense is that while in service, the workman remained under treatment of Railway Doctor from 1-11-1991 to 4-11-1991 but thereafter he remained absent unauthorisedly from 5-11-1991 to 23-12-1991 without any intimation to Management. He was issued a charge sheet for this misconduct on 9-1-1992. According, to the Management, the workman never produced any sickness certificate of treatment between 5-11-1991 to 23-12-1991. He only produced sickness certificate for four days issued by Railway Doctor for the period 1-11-91 to 4-11-91. The Departmental Inquiry was conducted as per rules . The Inquiry Officer rightly held the workman guilty of unauthorized absence. Punishment order is also not disproportionate to the charges. Accordingly the Management has prayed that the reference be answered against the workman.

4. The following issues were framed by my learned Predecessor vide his order dated 20-11-2013:-

- (1) Whether the Inquiry conducted against the workman is proper and legal?
- (2) Whether the misconduct alleged against the workman is proved in inquiry proceedings?
- (3) Whether the punishment imposed on workman i.e. removal from service is proper and legal?
- (4) If so, to what relief, the workman is entitled.?

5. **Issue No.1** was taken as preliminary Issue . The workman examined himself and was cross-examined by Management. The Management did not examine any witness on preliminary issue.

6. Preliminary Issue No.1 was decided by my learned Predecessor vide his order dated 24-4-2017 holding the departmental inquiry legal and proper. His this order is part of this Award.

7. Parties were given opportunity to lead their respective evidence documentary and oral on remaining issues. No evidence was adduced by any of the parties on remaining issues.

8. I have heard arguments of learned counsel Mr. K.C.Raikwar for workman and Shri R.K.Soni, learned Counsel for the Management and have gone through the record.

9. ISSUE NO.2:-

The charge against the workman is of unauthorized absence without notice or intimation to Management within the period 5-11-1991 to 23-12-1991. The inquiry Report admitted by the parties is on record which goes to show that one witness Govind, time keeper stated during the inquiry that the workman got his leave sanctioned for 30th and 31st October-1991. Thereafter the office received a sick certificate showing the workman sick in Railway Hospital from 1-11-91 to 4-11-91. This sickness certificate issued by the Divisional Medical Officer Gangapur was received in the office of Management on 15-11-1991. This witness further states that thereafter, the workman remained absent and did not send any communication in this respect to Management. He later on filed a discharge certificate through Mechanical Engineer, Ratlam. Discharge Certificate No.1922 dated 12-12-1991 showing that the workman was sick and under treatment of a private doctor for the period 5-11-1991 till 21-12-1991. This witness further stated during the inquiry that the workman filed some U.P.C. Certificate stating that he sent information of his sickness through these certificates but dates were not clear, hence this U.P.C. Certificates were not relied upon. It also comes out during the inquiry that the Certificate No.192626 dated 25-1-1992 issued by the Divisional Medical Officer states that Medical Certificate of private Doctor showing treatment under private doctor from 5-11-1991 to 21-11-1991. The workman states these facts in his statement during the inquiry also as it is established from the inquiry papers. Perusal of Inquiry Reports shows that the Inquiry Officer nor did the Divisional Medical Officer in his certificate No.192626 dated 25-1-1991 held that the certificate issued by the Private Doctor regarding treatment of the workman was fake or not genuine.

10. In the case of Learned counsel has further referred to case of **Krishnakant B.Parmar versus Union of India and other reported in 2012(3)SCC-178** wherein it has been observed that a Government employee who remained absent unauthorizedly from duty cannot be proceeded against until the charges proved his absence willful and not result of compelling circumstances. According to Hon'ble the Apex Court, unauthorized absence from duty and willful absence are two separate things.

11. Thus it is established now that to constitute a misconduct the absence of an employee must firstly be unauthorized and secondly it must be willful. The unauthorized absence may not necessarily be willful also in every circumstances. For example an employee moves out of his house for office and he meets with an accident and gets admitted for treatment say for a month. He does not intimate his office regarding his absence. His absence is unauthorized because it is not approved by the Office but it is not willful because he was under treatment during the period of his absence. In such a situation when it is established, in the case in hand that there is evidence before the Inquiry Officer that the workman was under treatment of private doctor from 5-11-1991 to 21-12-1991 and this fact/certificate in this respect is nowhere found false, the absence of the workman in the case in hand, is not willful though it may be unauthorized. He may be held guilty for misconduct only with respect of not informing his department regarding his absence within the time prescribed or within proper format.

12. Hence in the light of above discussion, the finding of the Inquiry Officer and finding of the Disciplinary /Appellate Authority holding the workman guilty of misconduct by way of unauthorized and willful absence is based on no evidence and is held perverse. The workman is held not guilty for the charges of unauthorized and willful absence. **Issue No.2 is answered accordingly.**

13. ISSUE NO.3 & ISSUE No.4:-

Since Issue No.3 and Issue No.4 are interconnected, they are being taken together.

14. In the light of finding on Issue No.2, it is held that the punishment of removal of workman from service is improper and illegal. Reference of judgment of Hon. The apex Court in the case of **Deepali Gundu Suwase Vs. Kranti Junior Adhyapad Mahavidyalaya**(2013) 10 SCC 324(2013(6) SLR 642(SC) broad principles in this respect were laid down by the Hon'ble Apex Court which is necessary at this point and are as follows:-

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

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/ workman, the financial condition of the employer and similar other factors.

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

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11- A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved then it will have the discretion not to award fullback wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charges then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Court should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrong doer is the employer and sufferer is the employee/workman and there is justification to give premium to, the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6 In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases, it would be prudent to adopt the course suggested in *Hindustan Tin works Private Limited V. Employees of Hindustan TinWorks Private Limited* (supra).

38.7 The observation made in *J.K. Synthetics Ltd. V. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to here-in-above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

Furthermore, in Tapash Kumar Paul V. BSNL (2014) 4 SCR 875 :[2014(6) SLR 538 (SC)] it is held :-

“Therefore, in the light of the decision of this Court in Deepali Gundu’s case (supra) which has correctly relied upon higher bench decisions of this Court in Surendra Kumar Verma’s case (supra) and Hindustan Tin Works Pvt. Ltd. (supra), I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own.”

15. In the case in hand, the charge has been held not proved, hence naturally the workman is entitled to be reinstated and is held accordingly. Since he was terminated on 17-9-1992 and the case is being decided after 30 years or more naturally he would have crossed the age of super annuation. Hence his reinstatement will not serve any real purpose. Accordingly, he is held entitled to be treated in service till date of his superannuation with all in service and post retiral benefits. Since he has been out of job during major portion of his career, he may not be awarded full back wages. In given circumstances 50% of back wages to him will meet the ends of justice to which he is held entitled. **Issue No.3 and Issue No.4 is answered accordingly.**

16. On the basis of the above discussion, following award is passed:-

- A. The action of the management “Senior Divisional Engineer(Diesel), West Railway Ratlam in terminating the services of Shri Vijay Kumar Mangalchand is held to be legal and justified.
- B. The workman is held entitled to be treated in continuous service till date of his superannuation with all in service and post retiral benefits. He is further held entitled to 50% of back wages payable to him within 60 days from the date of publication of Award in the official gazette failing which interest @ 6% p.a. from the date of Award till its realization.

17. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 10-11-2022

नई दिल्ली, 13 दिसम्बर, 2022

का.आ. 1345.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 32/2013) को प्रकाशित करती है।

[सं. एल-12011/87/2012-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 13th December, 2022

S.O. 1345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.32/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/87/2012– IR(B-1)]

A. K YADAV, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/32/2013

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

The General Secretary
Dainik Vetan Bhogi Bank Karmachari Sangathan,
F-1 Tripti Vihar, OPP. Engineering College
Ujjain(M.P.)

...Workman

Versus

The Regional Manager
State Bank of India
R.B.O
Ujjain(M.P.)

...Management

AWARD

(Passed on 18-7-2022.)

As per letter dated 1/2/2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/87/2012-IR(B-1). The dispute under reference relates to:

“Whether Shri Abdul Wahab is entitled for full wages as per Fifth Bipartite Settlement dated 10-4-1989 and 8th Bipartite Settlement dated 2-6-2005?1.- State Bank of India is a Banking Industry. 2. The nearest Tribunal is CGIT-Jabalpur.”

1. After registering the case on the basis of reference, notices were sent to the parties. Parties appeared and filed their respective claim/defense.

2. The dispute between the parties is that the workman was engaged as daily wage labour on casual basis and he worked for some time at Kanthal road Branch of State Bank of Indore, Ujjain. The dispute in the reference is only with respect to payment of equal wages to the daily wagers at par with regular employees in the Bank according to various Bi Partite Settlements. None of the parties have lead the oral and documentary evidence.

3. I have heard learned counsel for the Management and none was present from the side of the workman. No written argument was filed by workman side inspite of opportunity being given.

4. **The Reference is issue for determination in the case in hand.**

5. The case of the workman is that he was not paid wages according to the Bi Partite Settlements applicable in different time zones. The management has disputed the claim with a case that the Bi Partite Settlements are only for regular employees of the Bank and not for the daily wagers.

6. The management has referred to decisions of Hon'ble the Apex Court in the case of **State of Haryana and Another Vs. Tilak Raj & Others** reported in AIR(2003) SC 2658 wherein following observation has been made:-

“A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High court as to the nature of the duties of either categories and it is not possible to hold that the principle of “equal pay for equal work” is an abstract one.

“Equal pay for equal work” is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.”

7. Following observation has been made in another case of **Himanshu Kumar Vidvarthi & Others Vs. State of Bihar & Others** reported in AIR(1997) SC3657, where in it has been observed as under:-

“they are temporary employees working on daily wages. Under this circumstance, the dis-engagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment, therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the post, disengagement is not arbitrary.”

8. As referred by management, following observation has been made by Hon'ble the Apex Court in the case of **State of Rajasthan & Others Vs. Dayalal & Others** reported in (2011) 2 SCC 429:-

“(1) High Courts in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rule in an open competitive process against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be in violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary, ad hoc or daily wage service for a long number of years let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or to contend that the scheme should be applied to them by extending the cut off date or seek a direction for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. No can employees in private employment, even if serving full time, seek parity in salary with against the State must arise under a contract or under a statute.”

9. In the light of aforesaid proposition of law declared by Hon'ble the Apex Court, the daily wagers cannot be held to be entitled to the pay and wages equally paid to regular paid employees of the Bank and the issue requires to be decided against the workman.

10. On the basis of the above discussion, following award is passed:-

A. The action of the management in not holding Shri Abdul Wahab (workman) entitled for full wages as per Fifth Bipartite Settlement dated 10-4-1989 and 8th Bipartite Settlement dated 2-6-2005, is held to be just and proper.

B. The workman is held entitled to no relief.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 18-7-2020

नई दिल्ली, 13 दिसम्बर, 2022

का.आ. 1346.—औद्योगिक विवाद अधिनियम, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 4/2009) को प्रकाशित करती है ।

[सं. एल-41012/47/2008- आई आर (बी-1)]

ए.के. यादव, अवसर सचिव

New Delhi, the 13th December, 2022

S.O. 1346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.4/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of South East Central railway and their workmen.

[No. L- 41012/47/2008- IR(B-1)]

A.K YADAV, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/4/2009

Present: P.K. SRIVASTAVA H.J.S..(Retd)

Shri Premal
S/o Shri Tularam,
Qtr No.1, Block No.7,
Railway Colony Rasmda,
Durg (Chhattisgarh)

... Workman

Versus

The D.R.M.
South Eastern Railway
Nagpur.

The Assistant Divisional Engineer
South Eastern Central Railway,
District Rajnandgaon,
Dongargarh(Chhattisgarh)

... Management

AWARD

(Passed on 26-9-22)

As per letter dated 22/1/2009 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/47/2008-IR(B-1). The dispute under reference relates to:

“Whether the action of the management of South Eastern Railway(now South East Central Railway),Nagpur in terminating services of Shri Premal Sahu Ex-Trackman(Gang No.47,Rajnandgaon) vide letter dated 15-11-2004 is legal and justified? If not, what relief the workman concerned entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was first appointed as a Gangman on 10-2-1981. He was served with a charge sheet vide memo on 8-7-2002 with charges regarding unauthorized and willful absence from 1-1-1999 to 30-5-2002. The charge sheet was in English. The workman does not know English. He could not understand the charge sheet during the inquiry also he could not know what was happening. He was asked to sign some papers which he signed. Inquiry was conducted behind the back of the workman taking benefits of his ignorance of English language and order was passed by the Management on 15-11-2004 removing him from service. According to the workman, the punishment is against law and is in violation of principles of natural justice because the procedure as per rules have not been followed in conducting the departmental inquiry. No witness was examined in support of the charges in his presence. He

was not informed by the inquiry office regarding his right to engage a defense assistant. No show cause notice was given to him before the Award of punishment. According to the workman he was absented from duty on account of his illness for which he submitted illness and sickness certificate of Senior District Medical Office and on this basis he was allowed to join duty. The punishment was disproportionate to the charge, accordingly the workman has prayed that setting aside his punishment order, he be reinstated with all back wages and benefits. The case of the Management is mainly that the workman absented willfully and unauthorisedly from 1-1-1999 to 30-5-2002 without any intimation to the Management. A departmental inquiry was conducted, against him in which he participated. The inquiry officer rightly held him guilty of mis-conduct by way of unauthorized and willfully absenting himself from 1-1-1999 to 30-5-2002. The Disciplinary authority issued a show cause notice to him before proceeding on the inquiry report and finding his representation inadequate imposed the punishment of removal with certain conditions mentioned in the punishment order which is not disproportionate to the charge. Accordingly the Management has requested that the reference be answered against the workman.

3. A preliminary issue regarding legality of inquiry was framed and was decided by learned predecessor vide his order dated 12-5-2016 holding the inquiry conducted against law. The management was given opportunity to prove the charges before this Tribunal.

4. The examined its witness R.Jagmohan Rao Senior Divisional Personnel Officer to prove the charges. The management also relied on inquiry documents proved by them during their evidence on preliminary issue. The workman did not examine any witness or himself on this point.

5. I have heard arguments of learned counsel Mr. Ashish Shrotri for workman and Shri R.K.Soni, learned counsel for the Management and have gone through the records.

6. Following issues come out for determination on perusal of record in the light of rival arguments:-

(1)Whether the charges stand proved from the evidence before this Tribunal?

(2)Whether the punishment is proportionate to the charge.?

7. ISSUE NO.1:-

According to the Management, the workman was charged with misconduct by way of unauthorisedly and willfully absenting himself since 1-1-1999 to 30-5-2002. The Management witness has stated on oath that the workman was in the habit of absenting himself willfully and unauthorisedly. He remained absent from 1-1-1999 to 30-5-2002 without getting any leave sanctioned and without informing the management. He was issued oral and written warning earlier also for his absence but he has never improved, hence he was issued a charge sheet and on inquiry he was removed from service. This witness further states that the workman admitted his absence but told that he was sick for this period. The Management of Railways have their own railway hospital. The workman never received any treatment in Railway Hospital nor did he file any medical certificate regarding his treatment before the Management. This witness has been cross-examined by workman. He states that he has deposed on the basis of records available in his office.

8. The Management has proved ExhibitM-7 which is attendance sheet of the workman for the 1999 to 2002 which goes to support the claim of the management and evidence of management witness regarding the charges. The management witness has specifically stated that the workman did not produce any certificate regarding his treatment and any certificate to show that he was advised bedrest. Since it is the case of the workman he was sick during this period and hence could not attend his duties, the burden was on him to prove this fact before this Tribunal in which he has failed, hence in the light of the aforesaid discussion, the charge of misconduct as levelled above against the workman is held proved. **Issue No.1 is answered accordingly.**

9. ISSUE NO.2:-

According to Railway Rules(RSD&A Rules)1968 such an absence is misconduct warranting major punishment.

10. The settled law on this point is that until and unless the punishment is so shockingly disproportionate to the charge that it shakes the conscience of the Tribunal, interference is not warranted. Keeping in view the severity of the charges, the punishment of removal from service cannot be said to be so harsh to warrant interference. Accordingly the punishment is held not disproportionate to the charge. Issue No.2 is answered accordingly.

11. On the basis of the above discussion, following award is passed:-

A.The action of the management of South Eastern Railway(now South East Central Railway), Nagpur in terminating services of Shri Premal Sahu Ex-Trackman(Gang No.47,Rajnandgaon) vide letter dated 15-11-2004 is held to be legal and justified.

B.The workman is held entitled to no relief.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 26-9-2022

नई दिल्ली, 13 दिसम्बर, 2022

का.आ. 1347.—औद्योगिक विवाद अधिनियम, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार आरबीएल फिनसर्व लिमिटेड प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 47/2021) को प्रकाशित करती है ।

[सं. एल-12012/03/2021- आईआर-(बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 13th December, 2022

S.O. 1347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 47/2021) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of RBL Finserve Ltd and their workmen.

[No. L- 12012/03/2021- IR (B-I)]

A. K YADAV, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/47/2021

Present: P.K.SRIVASTAVA H.J.S..(Retd)

Shri Rahul Vishwakarma
House No.389, In front of
Victoria Hospital
Jonshgunj, Jabalpur-482001

....Workman

Versus

Shri Manish Paroha,
RBL finserve Ltd.
C-301, Lotus Cooperate Park,
CTA No.185/A
Gahem Firth Compound,
Western Express Highway,
Mumbai-400063

....Management

AWARD

(Passed on 30-8-2022.)

As per letter dated 28/9/2021 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/03/2021(IR(B-1)). The dispute under reference relates to:

“Whether the action of M/s RBL Finserve Ltd. In terminating the services of Shri Rahul Vishwakarma Sr. Group Loan Officer, w.e.f. 26-8-2020 without giving him an opportunity to be heard is legal and justified?if not, as to what relief the workman concerned is entitled to?

1. After registering the case on the basis of reference, notices were sent to the parties.
2. The workman never appeared inspite of service of notice on him and nor has filed any written statement of claim.
3. The Management has also not filed any statement of defence.
4. Insite of giving opportunities to both the parties, none of the parties have filed the written arguments.
5. The initial burden to prove their claim lies on the workman. He has not filed any statement of claim nor has he filed any documents or evidence in his support. The workman has miserably failed to prove his case. Hence this tribunal is constrained to decide the reference against the workmen.

6. Accordingly the award in favour of the Management is passed. The workman is held entitled to no relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 30-8-22

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष एवं प्रबंध निदेशक, बीएसएनएल, भारत संचार भवन, जनपथ, दिल्ली; महाप्रबंधक, सम्राट होटल, चाणक्यपुरी, नई दिल्ली; महाप्रबंधक, जनपथ होटल, जनपथ रोड, नई दिल्ली; निदेशक (वाणिज्यिक), आईटीडीसी, नई दिल्ली; महाप्रबंधक (होटल) आईटीडीसी, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री एम. पी. सत्यम और 53 अन्य, द्वारा महासचिव, आईटीडीसी होटल वर्कर्स यूनियन, जनपथ होटल, जनपथ रोड, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-1 नई दिल्ली के पंचाट (संदर्भ सं. 153/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-42011/80/2019- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th December, 2022

S.O. 1348.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 153/2019) of the Central Government Industrial Tribunal cum Labour Court - I New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman and Managing Director, BSNL, Bharat Sanchar Bhavan, Janpath, Delhi; The General Manager, Samrat Hotel, Chanakyapuri, New Delhi; The General Manager, Janpath Hotel, Janpath Road, New Delhi; The Director (Commercial), ITDC, New Delhi; The General Manager (Hotels) ITDC, New Delhi, and Shri M.P. Satyam & 53 Others, Through The General Secretary, ITDC Hotel Workers Union, Janpath Hotel, Janpath Road, New Delhi, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 42011/80/2019- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

**IN THE COURT OF JUSTICE VIKAS KUNVAR SRIVASTAVA (RETD.), PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, ROOM
No. 207, ROUSE AVENUE COURT COMPLEX, NEW DELHI**

ID. NO. 153/2019

Sh. M.P Satyam & 53 Others,
Through The General Secretary,
ITDC Hotel Workers Union, Janpath Hotel,
Janpath Road, New Delhi – 110001

...Workman

Versus

1. The Chairman and Managing Director, BSNL
Bharat Sanchar Bhavan, Harish Chandra Mathur Lane,
Janpath, Delhi – 110001
2. The General Manager,
Samrat Hotel, Chanakyapuri,
New Delhi – 110011

3. The General Manager,
Janpath Hotel, Janpath Road
New Delhi – 110001
4. The Director (Commercial), ITDC,
Scope Complex, Core-6, Lodhi Road,
New Delhi – 110003
5. The General Manager (Hotels) ITDC,
Scope Complex, Core-6, Lodhi Road,
New Delhi – 110003

....Management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.-L-42011/80/2019 – IR(DU) dated 11.06.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

“Whether termination of 54 workmen (list enclosed) in continuous services for 20 and more years through contractors can be construed as employment of workmen on perennial job through sham and bogus contractors? If yes, whether termination of 54 workmen without adhering to the provisions of ID Act, 1947 instead of regularization is just, fair and legal? If not, to what relief the concerned workmen are entitled?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice Sh. VIKAS KUNAVAR SHRIVASTAVA (Retd.) Presiding Officer

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमांडर वर्क्स इंजीनियर, दिल्ली कैंट, दिल्ली; श्री लाला राम प्रोप., मेसर्स वर्मा बिल्डर्स, पालम कॉलोनी, नई दिल्ली, के प्रबंधन के संबद्ध नियोजकों और श्री जगमीत सिंह, द्वारा इंडियन नेशनल माइग्रेंट वर्कर्स यूनियन, कालकाजी, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली के पंचाट (संदर्भ सं. 13/2020) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-42025/07/2022-33- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th December, 2022

S.O. 1349.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2020) of the Central Government Industrial Tribunal cum Labour Court - I New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commander Works Engineer, Delhi Cantt, Delhi ; Shri Lala Ram Prop., M/s Verma Builders,

Palam Colony, New Delhi , and Shri Dharam Pal, Through The General Secretary, Hindustan Engineering & General Mazdoor Union (Regd.), Sultanpuri, Delhi, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 42025/07/2022-33- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

**IN THE COURT OF JUSTICE VIKAS KUNVAR SRIVASTAVA (RETD.), PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT NO.1, ROOM NO.
207, ROUSE AVENUE COURT COMPLEX, NEW DELHI**

ID.NO. 13/2020

Sh. Dharam Pal S/o Gaj Ram,
Through The General Secretary,
Hindustan Engineering & General Mazdoor Union (Regd.),
D-2/24, Sultanpuri, Delhi

....Workman

Versus

1. The Commander Works Engineer,
Delhi Cantt, Delhi – 110010

2. Sh. Lala Ram Prop.,
M/s Verma Builders, 277, Manglapuri,
Phase – I, Palam Colony, New Delhi – 110045

.....Management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. ND.96(36)2019-ID-FOC-DY.CLC dated 05.12.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

“Whether the action of the management of M/s Verma Builders (Contractor of MES) in terminating the services of the workman Sh. Dharam Pal S/o Sh. Gaj Ram w.e.f. 01.04.2017 is just, fair and legal? If not what relief the workman concerned is entitled to and from which date?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice Sh. VIKAS KUNAVAR SHRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स मास मैनेजमेंट सर्विसेज प्राइवेट लिमिटेड, नई दिल्ली; मैसर्स एनटीपीसी लिमिटेड, नई दिल्ली, के प्रबंधन के संबद्ध नियोजकों और श्री जगमीत सिंह, द्वारा इंडियन नेशनल माइग्रेंट वर्कर्स यूनियन, कालकाजी, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई

दिल्ली के पंचाट (संदर्भ सं. 154/2019) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-42011/79/2019- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th December, 2022

S.O. 1350.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 154/2019) of the Central Government Industrial Tribunal cum Labour Court - I New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Mass Management Services Pvt. Ltd., New Delhi ; M/s NTPC Ltd., New Delhi , and Shri Jagmeet Singh, Though Indian National Migrant Workers Union, Kalkaji, New Delhi, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L- 42011/79/2019- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

**IN THE COURT OF JUSTICE VIKAS KUNVAR SRIVASTAVA (RETD.), PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT NO.1, ROOM NO.
207, ROUSE AVENUE COURT COMPLEX, NEW DELHI**

ID.NO. 154/2019

Sh. Jagmeet Singh S/o Sh. Surender Singh,
Rept. Indian National Migrant Worker's Union,
(Regd.) 1770/8, 3rd Floor, Govindpuri Extention,
Main Road, Kalkaji, New Delhi – 110019

....Workman

Versus

1. M/s Mass Management Services Pvt. Ltd.
B-7, Ansal Chambers-II, 6, Bhikaji Cama Place,
New Delhi - 110066
2. M/s NTPC Ltd., NTPC Bhawan,
Scope Complex, 7, Lodhi Road, Institutional Area,
New Delhi – 110003

...Management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.-L-42011/79/2019 – IR(DU) dated 18.06.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

“Whether the services of the workman Sh. Jagmeet Singh S/o Sh. Surender Singh were terminated in an illegal and unjustified manner by M/s Mass Management Services Pvt. Ltd. in the establishment of NTPC Ltd. Scope, New Delhi? 2. If yes, whether the workman is entitled the workman is entitled to reinstatement with full back wages and other benefits? 3. What other relief the workman is entitled to?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice Sh. VIKAS KUNAVAR SHRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महानिदेशक, ईएमई (सिविल), अध्यादेश शाखा मास्टर जनरल, मुख्यालय, नई दिल्ली; कमांडिंग ऑफिसर, स्टेटिन वर्कशॉप, ईएमई कैंट, लखनऊ के प्रबंधन के संबद्ध नियोजकों महासचिव, श्री परवेज आलम द्वारा प्रतिरक्षा मजदूर संघ, माणक नगर, लखनऊ, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 61/2019) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 30/11/2022 को प्राप्त हुआ था।

[सं. एल-14011/14/2019- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th December, 2022

S.O. 1351.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2019) of the Central Government Industrial Tribunal cum Labour Court— Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General, EME (Civil), Master General of Ordinance Branch, Headquarter of New Delhi; The Commanding Officer, Statin Workshop, EME Cantt, Lucknow and The General Secretary, Pratiraksha Mazdoor Union by Shri Parwej Alam, Manak Nagar, Lucknow, which was received along with soft copy of the award by the Central Government on 30/10/2022.

[No. L-14011/14/2019- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT: JUSTICE ANIL KUMAR, Presiding Officer

I.D. No. 61/2019

Ref. No. L-14011/14/2019-IR(DU) dated: 25.07.2019

BETWEEN

The General Secretary
Pratiraksha Mazdoor Union by Sh. Parwej Alam
283/63, B, Gadhi Kanora (Premwati Nagar)
PO – Manak Nagar, Lucknow 226011.

AND

1. The Director General, EME (Civil)
Master General of Ordinance Branch
Headquarter of New Delhi – 110005
2. the Commanding Officer
Statin Workshop, EME Cantt
Lucknow – 226002

AWARD

By order No. L-14011/14/2019-IR(DU) dated: 25.07.2019 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

“Whether the action of management of the Commanding Officer, Station Workshop, EME, Cantt. Lucknow and Director General, EME (Civil), Directorate General of EME (Civil), Master General of Ordinance Branch, HQ of MOD (Army), New Delhi for reversion of granted MACP/ACP from higher grade pay of workman Sh. Rakesh with complying with the section 9(A) and 25(T) of Industrial Dispute Act, 1947 is justified in eye of law or not. If, so to what relief the concerned workman is entitled to?”

Accordingly, an industrial dispute No. 61/2017 has been registered on 21.08.2019.

Heard Sri G.C. Nigam, authorised representative of the workman, Rakesh and Shri Kunver Chandra for EME.

Today an application has been moved on behalf of Sri Rakesh who has been identified by Sri G.C. Nigam, advocate/authorised representation who appears on his behalf. In the said application it is stated that in the controversy in which the present reference has been made has already been settled between the workman union viz. Vidyut Yantrik Abhiyanta Karmchari Sangh, Lucknow and the employer on 14.01.2021. A copy of the same is annexed as annexure no. 1 to the application; relevant portion of the same is quoted hereunder:

“1. The management is agree that no recovery will be made from the wages/salary of the workmen as per DOPT circular no. 18/03/2015 estab. (Part-I) dated 02.03.2016.

2. In case further any modification of pay fixation may be required in light of aforesaid circular of DOPT, in such circumstances, the management is empowered to act accordingly in uniform basis.

The union is agree with the fair action of the management. Accordingly, the matter has been settled amicably.”

Accordingly, a request has been made that the present reference may be disposed of in terms of said settlement.

Sri Kunwar Chandra, UDC on behalf of employers has no objection to the above said request.

For the foregoing reasons the present case is disposed of in terms of the settlement entered between Sri Sharda Bux Singh, General Secretary, Yantrik Abhiyanta Karmchari Sangh, Lucknow to which the applicant/workman is a member and Sri P.P. Pandey, SOB, Station Workshop, EME, Lucknow. The relevant portion has been quoted hereinabove.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उप महाप्रबंधक, इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, रायबरेली के प्रबंधन के संबंध में श्री राज नारायण, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 87/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 30/11/2022 को प्राप्त हुआ था।

[सं. एल-42012/126/2012- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 14th December, 2022

S.O. 1352.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/2012) of the Central Government Industrial Tribunal cum Labour Court— Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Deputy General Manager, Indian Telephone Industries Ltd., Raebareli and Shri Raj Narayan, Worker, which was received along with soft copy of the award by the Central Government on 30/10/2022.

[No. L- 42012/126/2012- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT: Justice ANIL KUMAR, Presiding Officer

I.D. No. 87/2012

Ref. No. 42012/126/2012-IR (DU) dated: 06.12.2012

BETWEEN

Shri Raj Narayan S/o Shri Ram Naresh Harijan
Gram & Post Gonde
Distt. Pratapgarh, Raibareli.

Vs

The Dy. General Manager
Indian Telephone Industries Ltd.
Sultanpur Road, Doorbhash Nagar
Raibareli.

AWARD

By order No. 42012/126/2012-IR (DU) dated: 06.12.2012, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication with following schedule:

“Whether the action taken by the management of ITI limited, Raibareli in terminating the services of Shri Raj Narayan, Fitter, w.e.f. 23-01-1986 without following the provisions of ID Act 1947 and not considering his representative did. 23-02-1986 even on the directions of Hon'ble High Court, Allahabad is justified & legal? If not, what relief the workman is entitled to?”

None present on behalf of claimant; even in the revised list.

Heard Sri Adarah Jagdhari, learned counsel for the ITI/respondent.

From perusal of the record the position which emerges out is that the workman, Raj Narayan, was initially appointed as Fitter-Grade ‘B’ on 16.10.1982 in the ITI Limited, Raebareli.

By an order dated 23.01.1986 his services were terminated.

Aggrieved by the termination order Sri Raj Narayan filed a WP No. 177 (SS) of 1998 Raj Narayan v. Personnel Manager (Administration) Indian Telephone Industries, Raebareli & others before the Hon'ble High Court, in which an order dated 15.01.1998 has been passed, operative portion reads as under:

“According to the petitioner his services were orally” dispensed with orally some time in 1986 and for the first time he has approached this court against the said order. The delay of 12 years has not been explained therefore, the writ petition suffers from lackes and no interference is required.”

Again Sri Raj Narayan filed a WP No. 2147 (SS) of 1998 Raj Narayan v. General Manager, Indian Telephone Industries, Raebareli & another, disposed of by order dated 21.05.1998, operative portion reads as under:

“After hearing the learned counsel for the petitioner and considering the materials available on word, as it appears that the petitioner has already availed of the alternative remedy by way of appeal and the same is still pending, I dispose of this writ petition with only direction upon the appellate authority to decide the sit appeal in accordance with law within three months from the date of production of a certified copy of this order.”

Thereafter, order dated 21.05.1998, passed in WP No. 2147 (SS) of 1998 was challenged by the Indian Telephone Industries, Raebareli & another by filing a Special Appeal No. 221 (SB) of 1998 Indian Telephone Industries, Raebareli & another v. Raj Narayan, which was dismissed by order dated 26.04.2001, which reads as under:

“Hon'ble the Single Judge has passed an order to the effect that the petitioner had already availed of the alternative remedy by way of appeal, which was said to be pending. The writ petition was accordingly disposed of with the direction to the appellate authority to decide the said appeal in accordance with law within a specified period. Against that order, the Indian Telephone Industries Ltd., has filed the present special appeal

The contention of the appellants appears to be is that since the respondent had earlier filed a W.P. No.177 (S/S) of 1998 bearing the same grievance, which was dismissed no second writ petition was maintainable. Besides the above. it was submitted that no appeal before the appellate authority alleged to have been filed by the respondent, was pending.

In view of the fact that the respondent has invoked the jurisdiction of - this Court by filing second writ petition on the same controversy, the second writ petition after dismissal of the first one, was not maintainable. No appeal was pending which deserves to have been decided by the appellate authority, in

view of what has been indicated above, the appeal succeeds. The order passed by the Hon'ble the single Judge dated 21.3.1998 is set aside."

In view of the above said back ground the applicant/workman aggrieved by the order of termination dated 23.01.1986 has approached the Appropriate Government and accordingly, the present reference has been made.

After hearing the learned counsel for the respondent and gone through the material on record, once the order of termination dated 23.01.1986 by which the workman, Raj Narayan was orally terminated by management of ITI Limited, Raebareli, against which he filed a WP No. 177 (SS) of 1998 (Raj Narayan v. Personnel Manager (Administration) Indian Telephone Industries, Raebareli & others) before the Hon'ble High Court, was dismissed vide order dated 15.01.1998.

And thereafter the order which was passed in the favour of the petitioner/workman by the Hon'ble High Court in WP No. 2147 (SS) of 1998 Raj Narayan v. Indian Telephone Industries, Raebareli & another in which a direction has been given to the Appellate Authority to decide the appeal of the applicant in accordance with law, against which a Special Appeal No. 221 (SB) of 1998 filed by the Indian Telephone Industries, Raebareli was allowed and order dated 21.05.1998 has been set aside.

The oral order of termination dated 23.01.1986 by which the services of the applicant has been terminated from the post of Fitter Grade-B has dismissed by order dated 15.01.1998, had attained finality.

And on the same cause of action, the present adjudication case was filed before this Tribunal.

In these circumstances, this Tribunal has got no jurisdiction to adjudicate and decide the present dispute. Because, as per settled position of law, if on a cause of action, a matter is closed then on same cause of action another case is not maintainable as held by Hon'ble Supreme Court in the case of *Burn & Co. Vs. Their Employees*, AIR 1957 SC 38, the Apex Court, as under:

"That would be contrary to the well-recognised principle that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. It is on this principle that the rule of res judicata enacted in Section 11, Civil P.C. is based. That section is, no doubt in terms in application to the present matter, but the principle underlying it, expressed in the maxim "interest rei publicae ut sit finis litium", is founded on sound public policy and is of universal application. (Vide Broom's Legal Maxims, Tenth Edition, page 218). The rule of res judicata is dictated' observed Sir Lawrence Jenkins C.J. in Sheoparasan Singh Vs. Ramnandan Prasad Narayan Singh, 43 Ind. App. 91: ILR 43 Cal. 694: (AIR 1916 PC 78) (C), by a wisdom which is for all time." (See also M/s. Sarguja Transport Service Vs. State Transport Appellate Tribunal & Ors., AIR 1987 SC 88; Ashok Kumar & Ors. Vs. Delhi Development Authority, 1994 (6) SCC 97; and Khacher Singh Vs. State of U.P. & Ors., AIR 1995 All. 338.)

Even otherwise, this Tribunal is sub-ordinate to the Hon'ble High Court, so once issue in controversy has been decided by Hon'ble the High Court as stated above, the same cannot be adjudicated and decided by this Tribunal.

Thus, present industrial dispute is not maintainable and is dismissed; the workman is not entitled for any relief.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ सं. 60/2014) को प्रकाशित करती है !

[सं. एल-41012/28/2014- आईआर-(बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 14th December, 2022

S.O. 1353.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 60/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen.

[No. L- 41012/28/2014- IR (B-I)]

A. K YADAV, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT: Justice ANIL KUMAR, Presiding Officer

I.D. No. 60/2014

Ref. No. L-41012/28/2014 – IR(B-1) dated 14.10.2014

BETWEEN

Shri Hari Prasad S/o Late Kanhiya Lal C/o Shri Parvej Alam,
83/63, Kh Gari Kannora Premvati Nagar, Manak Nagar
Lucknow (U.P)

AND

The Divisional Signal & Tele Communication Engineer (Construction),
North Eastern Railway
DRM Office, Ashok Marg, Lucknow

AWARD

By Order No. L-41012/28/2014 – IR(B-1) dated 14.10.2014 issued by Government of India, Ministry of Labour, Shram Mantralaya the following reference is made to this tribunal.

“क्या पूर्वोत्तर रेल प्रशासन, लखनऊ द्वारा श्री हरी प्रसाद पुत्र स्व० कन्हैया लाल, ग्रेड -1 को क्वालीफाइंग सर्विस 23 वर्ष 04 माह 05 दिन के आधार पर सेवानिवृत्त हित लाभों का भुगतान न किया जाना न्यायोचित एवम वैध है? यदि नहीं तो कामगार किस राहत को पाने का हकदार है?”

On 10.12.2014, claim petition has been filed by the claimant, in brief the facts which are pleaded therein are that by an order dated 26.06.1985, the claimant was appointed and thereafter by an order dated 23.10.1985 he was given status of temporary employee.

On 26.03.1988 his services were regularized on the post of Helper Khalasi Grade-I. After attaining the age of superannuation on 31.07.2011 he retired from services from said post.

It is further pleaded by the workman in its statement of claim that total period of services which were rendered by him under employment of respondent was 23 years 04 months 05 days; but, after retirement the post retiral dues paid to the claimant was made taking into consideration 18 years 05 months and 14 days as qualifying services instead of 23 years 04 months 05 days.

Accordingly, a prayer has been made that the respondent may be directed to make payment of his post retiral dues (pension, gratuity etc.) taking into consideration qualifying service of the claimant as 23 years 04 months 05 days.

On behalf of the respondents a written statement has been filed on 04.07.2015 and in the additional plea the defence was taken by the respondent as under:

“5 यह कि कार्यालय पत्र संख्या W/175/8/0A/Con/P to 2/735 / Dtd 5-8-87 उक्त श्रमिक /कर्मकार को आकस्मिक श्रमिक के रूप में दिनांक 26-6-85 को भर्ती किया गया था तथा प्रोजेक्ट दर 196+डी ए दिनांक 23-12-85 से दिया गया था / श्रमिक कर्मकार प्रशासन तथा ए०एल०सी० (केन्द्रिय), लखनऊ के समझौते के अनुसार श्रमिक / कर्मकार को रेल सेवा में पुर्नबहाल किया था तथा दिनांक 01-4-87 से प्रोजेक्ट दर दिया गया।

6 यह कि श्रमिक द्वारा 360 दिनों की आकस्मिक सेवा पूर्ण कर लेने के उपरान्त डिवीजनल सिंगल एवं दूरसंचार इंजीनियर/निर्माण, लखनऊ के ज्ञापन संख्या - N / 175/8/0/ Con / 309/Dtd 30-6-88 द्वारा श्रमिक कर्मकार के पक्ष में टेम्पोरेरी स्टेटस दिनांक 26-3-88 से स्वीकृत किया गया था।

7 यह कि श्रमिक कर्मकार को दिनांक 26-3-88 से सेवा नियमन न होकर अस्थायी ओहदा टेम्पोरेरी स्टेटस स्वीकृत किया गया / श्रमिक / कर्मकार का सेवा नियमन दिनांक 31-12-97 को किया गया था।

8 यह कि विपक्षी के कार्यालय पत्रावली के अनुसार कर्मचारी की सेवा गणना इस प्रकार है:

26-3-88 (टेम्पोरेरी स्टेटस की तिथि) से 31-12-97 (नियमन की तिथि)

- 09 वर्ष 09 माह 05 दिन

50% टेम्पोरेरी स्टेटस के निमित्त देय - 04 वर्ष 10 माह 17 दिन दिनांक 01-01-98 से 31-7-11

- 13 वर्ष 01 माह 30 दिन

कुल - 18 वर्ष 05 माह 17 दिन

9 यह कि श्रमिक को सेवा के अनुसार गणना करके उसका उचित भुगतान किया जा चुका है। इस प्रकार से श्रमिक का किसी प्रकार का भुगतान विपक्षी पर शेष नहीं है। विपक्षी द्वारा कार्यालय ज्ञापन संख्या - N/P.F./N E / Hari Prasad / 398/Dtd 27-11-14 से इसकी सूचना श्रम मंत्रालय भारत सरकार नई दिल्ली को पूर्व में ही प्रेषित की जा चुकी है।“

On 15.09.2015 rejoinder has been filed by the claimant however there was no categorical denial of the averments made by the respondent in additional pleas are quoted hereinabove.

Matter is taken up in revised cause list.

None is present on behalf of the claimant.

Heard learned counsel for the respondent and perused the record.

In short controversy to be decided in the present industrial dispute case is to the effect that whether the post retiral dues which were paid to the claimant by the respondent taking qualifying services as 18 years 05 months and 14 days after his superannuation on 31.07.2011 or he is entitled for same or as per his case that the qualifying services, rendered by him prior to his retirement was 23 years 04 months 05 days.

Taking into the consideration the pleadings of the parties, other material on record as well as the document filed on behalf of the parties, the position which emerges out is that it is specifically pleaded on behalf of the respondent that the claimant/workman has been paid retiral dues taking into qualifying services as rendered by him as 18 years 05 months and 14 days; and in support of their case they had filed a document i.e. a letter dated 27.11.2014 written by the railway authority to the concerned authority of the Labour Ministry, New Delhi, which reads as under:

“सं-एन/पी० एफ०/नि०/हरी प्रसाद/398

कार्यालय

उप मुसिद्दी०/नि०/

पूर्वोत्तर रेलवे, लखनऊ

दिनांक-27.11.2014

सेवा में,

सुमती सकलानी

सेक्सन आफिसर. T. No. 23473150

भारत सरकार, श्रम मंत्रालय

नई दिल्ली

विषय- श्री हरी प्रसाद पुत्र श्री कन्हई लाल, भु० पू० हेल्पर के बाद के सम्बन्ध में।

सन्दर्भ- भारत सरकार श्रम मंत्रालय पर्द दिल्ली का पत्र सं० L-41012/28/2014-

IR/B-1 दिनांक -20.10.2014

भारत सरकार श्रम मंत्रालय / नई दिल्ली के उपरोक्त पत्र द्वारा विषयागत कर्मचारी के बाद के सम्बन्ध में जो जानकारी मांगी है। वे निम्न प्रकार से दिया जा रहा है।

श्री हरी प्रसाद पुत्र श्री कन्हई लाल नू०पू० हेल्पर की भर्ती आकस्मिक श्रामिक के रूप दिनांक- 26.06.1985 को हुई थी। रेलवे बोर्ड/नई दिल्ली के पत्र सं०-एस / एनजी/11/ 84/सीएल/41 दिनांक- 11.09.1986 के 3b के क्रम सं०-IV के अनुसार इनके पक्ष में टेम्पेरीस्टेट्स (अस्थायी ओहदा) दिनांक- 26.03.1988 से स्वीकृत किया गया था। (फोटोकापी संलग्न)

उक्त कर्मचारी की सेवा गणना टी / एस अवधि से नियमन की तिथि तक दिनांक- (26.03, 1988, से 31.12.1997) 50% की गणना के आधार पर किया गया था जो कि रेलवे बोर्ड / नई दिल्ली के पत्र सं०- पीसी-V/2009/ACP/2 दिनांक 25.02.2010 के अनुसार किया गया था। (फोटोकापी संलग्न)

नियमन तिथि से सेवा निवृत्ति तिथि तक 01.01.1998 से 31.07.2011 तक की अवधि 100% की गणना किया गया था।

अतः उक्त कर्मचारी को टी / एस से नियमन तिथि तक 50% तथा नियमन तिथि से सेवा निवृत्ति तक 100% की गणना कर कुल 18 वर्ष 05 माह 07 दिन का पेन्शनीय लाभों का भुगतान किया गया जिसके वे हकदार थे।

वर्तमान समय में भी जो कर्मचारी (आ० श्रमिक में नियुक्ति वाले) सेवा निवृत्ति हो रहे हैं उक्त प्रकार से ही सेवा गणना पेन्शनीय लाभ दिया जा रहा है।

-है-

मसिद्दई / निर्माण लखनऊ”

As stated above the facts stated in the additional pleas and the above stated document filed by the respondent in support of their case were not denied from the side of the workman nor any evidence has been filed in support of his case that at the time of retirement the qualifying services rendered by him was 23 years 04 months and 05 days and the document filed on behalf of the respondent are incorrect.

Thus, taking into consideration the above said facts, I do not find force in the case of the claimant that he is entitled for pensionary benefits as per qualifying services 23 years 04 months 05 days; rather he has been paid the posit retiral dues after his retirement on 31.07.2011 by the respondent taking into his consideration his qualifying service as 18 years 05 months and 14 days.

For the foregoing reasons, there is any force in the case of the workman, and the reference under adjudication is adjudicated against him, resultantly he is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 14 दिसम्बर, 2022

का.आ. 1354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदोर प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 92/2007) को प्रकाशित करती है !

[सं. एल-12012/84/2007- आई आर (बी-1)]

ए.के. यादव, अवर सचिव

New Delhi, the 14th December, 2022

S.O. 1354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 92/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen.

[No. L- 12012/84/2007- IR(B-1)]

A.K YADAV, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/92/2007

Present: P.K.SRIVASTAVA H.J.S..(Retd)

The General Secretary,
Nationalised Bank Karmachari Sangathan
9, Sanwer Road, Ujjain(M.P.)

....Workman

Versus

The Deputy General Manager
State Bank of Indore,
Head Office,
5, Y.N.Road, Indore(M.P.)

...Management

AWARD

(Passed on 15-11-2022.)

As per letter dated 17/9/2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/84/2007-IR(B-1). The dispute under reference relates to:

“Whether the action of the Deputy General Manager, State Bank of Indore in issuing orders for compulsory retirement of Shri Narendra Shah, Daftari, is justified? if not, to what relief the workman concerned is entitled. .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was first appointed with the State Bank of Indore on 29-8-1981 as Peon. He was later on promoted as Daftari in Rajgarh Branch of Bank in the year 1981. He was issued a charge sheet alleging acts of misconduct on 31-5-2001 and was placed under suspension. An inquiry was conducted against him which was against law. Charges were held wrongly proved and punishment was disproportionate to the charges. The workman has accordingly prayed that setting aside his sentence, he be held entitled to be reinstated with all back wages and service benefits.

3. The case of Management is mainly that while the workman was posted as Daftari in the Branch of the Bank his services were found totally unsatisfactory. He was punished with stoppage of four increments for misconduct proved against him by order of Management dated 27-2-1999. He did not improve himself. On 10-4-2001 at about 1.30 p.m. he was sleeping in the Bank on the bench reserved for customers when he was asked by the Manager to do his duty, he abused the Manager and refused to obey his direction. Thereafter, he sent a letter to Management stating inappropriate statements against his Senior Officers. He was suspended for this misconduct and was issued a charge sheet. His explanation was found insufficient, hence a departmental inquiry was conducted in which he was given full opportunity to defend himself. The Inquiry Officer submitted his report to the Disciplinary Authority holding the charges proved. The Disciplinary Authority passed the impugned order of punishment of compulsory retirement. An appeal filed by the workman was dismissed after hearing.

4. Following issues were framed by my learned Predecessor on the basis of pleadings:-

(1) Whether the inquiry conducted against the workman is legal and proper?

(2) Whether the misconduct alleged against the workman is proved?

(3) Whether the punishment is legal and proper?

5. All the issues were taken up together. The workman did not produce any evidence. The Management filed affidavit of its witness. The workman did not appear for cross-examination.

6. At the stage of arguments also the workman did not appear, hence arguments of learned counsel for the management were heard by me. The workman did not file any written arguments, inspite of opportunity given.

7. ISSUE NO.1:-

The initial burden to prove this Issue is on the workman. He has not filed any evidence. Perusal of Affidavit of Management witness which is uncross-examined shows that the inquiry was proper and legal, hence **Issue No.1 is decided against the workman, holding the inquiry legal and proper.**

8. ISSUE NO.2-

The settled law is that the standard of proof required to prove charge during the departmental inquiry is not beyond reasonable doubt, rather, it is to the extent of reasonable probability which is to be seen, whether a charge is proved in the departmental inquiry or not. The learned counsel for the Management has referred to following case laws in this respect:-

A. **State of A.P. Vs. Sree Rama Rao** (1963) SC 1723 wherein it has been held that :-

“...a disciplinary proceeding is not a criminal trial and that the standard of proof required in a disciplinary inquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial.”

B. In another case **B.C. Chaturvedi Vs. Union of India** (1995) 6 SCC 749, it has been held that :-

“the power of judicial review is meant to ensure that the individual receives fair treatment and not ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. The disciplinary authority is the sole Judge of facts. The Court/Tribunal in its power of review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.”

The workman has not lead any evidence on this issue. From the perusal of statement of management witness in the form of affidavit and inquiry papers, the charges are held proved and **Issue No.2 is answered accordingly.**

9 ISSUE NO.3:-

Before proceeding, the settled preposition of law on the issue requires to be mentioned, which is as follows:-

A. Hon'ble Apex Court in **B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof.”

B. In **DG, RPF vs. Sai Babu (2003) 4 SCC 331**, Hon'ble Apex Court has observed that:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department /establishment which the delinquent person concerned works.”

C. In **United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

D. In Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257 Hon'ble Supreme Court reiterated the legal position as follows:

"..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

E. In State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

F. Hon'ble Apex Court in Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101 has observed that :

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

10. It is on record that the workman has been punished earlier for several misconduct in the light of principle of law referred to above, keeping in view the misconduct proved, the punishment of compulsory retirement cannot be held to be excessive, hence holding the punishment appropriate, **Issue No.3 is answered accordingly.**

11. On the basis of the above discussion, following award is passed:-

A. The action of the Deputy General Manager, State Bank of Indore in issuing orders for compulsory retirement of Shri Narendra Shah, Daftari, is held justified.

B. The workman is held entitled to no relief.

C. Parties to bear their own cost.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 15-11-2022

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदोर के प्रबंध तंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 44/2003) को प्रकाशित करती है

[सं. एल-12012/270/2002- आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 44/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen.

[No. L- 12012/270/2002- – IR(B-1)]

A.K YADAV, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/44/2003

Present: P.K. SRIVASTAVA H.J.S..(Retd)

Shri Prahlad Das Chauhan,
S/o Shri Kanhiyalal Chouhan
P-4 Kamla Nagar,
Rasalpura District Indore (M.P.)

...Workman

Versus

The Assistant General Manager-I
State Bank of Indore, Zonal Office
163, Ghiya Chambers, KanchanBagh,
Indore (M.P.)

....Management

AWARD

(Passed on 14-10-2022.)

As per letter dated 6/2/2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/270/2002-IR(B-1). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager-1 State Bank of Indore, Indore in dismissing the services of ShriPrahlad Das Chouhan S/o KanhaiyalalChouhanw.e.f. 24/10/2002 is Justified? If not, what relief the workman is entitled ?” .

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was appointed as a peon in the Bank on 30-9-1969 and was promoted as a clerk cum go down keeper on 1-11-1978. He was posted in the MHOW Branch of the Bank as a Clerk. He was placed under Suspension by the management on 12-7-1997 and an FIR was registered by the Bank Management against him in police Station Mhow District Indore, regarding allegations of fraud and other offences against him and his co-workers. He was issued a charge sheet by Management on 18-12-1998 with as many as six charges against him and was asked to submit his representation against the charges. He requested the Management to submit some documents which were not supplied according to him. The Management decided to conduct a departmental inquiry against him. ShriA.K.Joshi was appointed as the Inquiry Officer and ShriR.K.Ghadgil was appointed as the Presenting Officer. According to the workman the inquiry conducted was not legal and proper. He was not provided with an opportunity to produce evidence in his defence. The Inquiry was not stayed till the decision of criminal case pending against him with respect to the same charges. The Inquiry Officer wrongly held the charges proved in his inquiry report. the Disciplinary Authority relying on wrong finding reached at by the Inquiry Officer in the Inquiry report passed the impugned punishment order of dismissal which is discriminatory because the other officials/officers involved in the same transaction namely KeshavGhande, Officer, Mohan Moyal and Hari Shankar, Vijay Vargeye, Special Assistant were permitted to seek Voluntary Retirement as per Scheme, hence the punishment order is itself discriminatory against the workman. Accordingly, he has prayed that holding the punishment against law, the workman be reinstated with all back wages and benefits.

3. The case of the management is mainly that before the inquiry, and even during the inquiry, the workman was supplied copies of documents in support of charge. He participated during the inquiry, cross-examined the management witness, also adduced evidence on his behalf. The Inquiry Officer rightly concluded that the charges i.e. Charge No. 1 to 5 were proved against the workman and keeping view the nature of the charges, the punishment is also disproportionate to the charges. Accordingly, the management prayed that the reference be answered against the workman.

4. The Preliminary Issue regarding legality of the inquiry was decided by my learned Predecessor vide his order dated 5-5-2016, holding the inquiry conducted legal and proper. His this order is part of this award.

5. Following other issues were framed by my learned Predecessor on 5-5-2016:-

- 1) **Whether the alleged misconduct is proved from the evidence in the inquiry proceedings?**
- 2) **Whether the punishment of dismissal imposed against the workman is legal and proper?**
- 3) **If so to what relief, the workman is held entitled?**

6. **ISSUE NO.1:-** Parties were given opportunity to lead evidence on these issues. The workman examined himself and was cross-examined. He proved documents Exhibit W-8 and W-9 to be referred to as and when required. The Management did not lead any other evidence on this Additional issues. The Management has held proved the inquiry papers and punishment order which are exhibits M1 to M7.

7. I have heard arguments of learned counsel Mr. Uttammaheshwari for the workman and Shri Ashish Shroti for the Management. The workman has filed written arguments which is taken on record. I have gone through the record and written arguments also.

8. Learned Counsel for the workman has submitted that there were following charges against the workman which were held proved by the Inquiry Officer after inquiry:-

- A. **First party was charged that he conspired with Shri N.D. Shastri (in charge of savings a/c) and cleared withdrawal slips which contained forged signatures of account holders as detailed in Annexure-1.**
- B. **First party was charged that he failed to discharge duties honestly and withdrawal slips were cleared without presenting the pass books. And said slips were forwarded to the clearing authority;**
- C. **First party was charged that he received cash from account holders, and without depositing in bank accounts of concerned account holders, marked endorsement in the pass-book and kept the cash with himself.**
- D. **First party was charged that he deposited cash in the bank account of account holders without making any entry in passbooks so that their withdrawal could be cleared, without they becoming aware of forgery committed with them;**
- E. **First party was charged that when account holder Smt. Laxmibai w/o Shri Ramnarayan Sharma A/No. L-217 came for withdrawal of Rs.1204/- he himself filled in the withdrawal slip and later on forged it for Rs.7,204/- and thus illegally withdrew Rs.7000/- in excess from her bank account (year 1997).**

9. He has further referred to statement of management witness R.K. Ghatge, Shri Sharad Rokde and Shri Govind Rawal and has submitted that they are not handwriting experts. They have admitted that they were never posted with the workman. Their statement that the entries made in the pass book and ledger register are in the handwriting of the workman on comparison of other entries written in the handwriting of the workman. They have further stated that the signature and column in the withdrawal forms have been filled by the workman himself in his own handwriting and they are stating so after comparing the handwriting of the workman. They have further stated that the signature and the columns in the withdrawal forms have been filled by the workman himself in his own handwriting and they are stating so after a comparison of handwriting of the workman in other documents and registers available in the bank records. According to the learned counsel, these witnesses are not handwriting experts. They have never seen the workman righting in any document or making any signature. Learned Counsel has referred to decision of Hon'ble the Apex Court in the case of **Ministry of Finance Vs. Ramesh 1998 SCC (L&S) 865 wherein it has been observed** "that the statement of witness who is not handwriting expert or signature of person is only a guess work which does not amount to proof even in a disciplinary proceedings. It has been further held that though the degree of proof required in the departmental inquiry need not be of same standard as the degree of proof required for establishing guilt of an

accused in a criminal case”, the law is settled now that suspicion however strong cannot be substituted for proof even in departmental disciplinary proceeding.

10. Their appears force in this argument of learned counsel for the management that the statements of these witnesses that the handwriting and signatures which are said to be false and forged are in the handwriting of the workman cannot be believed because they are neither handwriting experts nor have they seen the workman writing it at any point of time. But this matter requires to be seen from another angle also. The charges against the workman is that he paid the amount in the withdrawal slips without making any entry in the pass books of the account holders. While working as clerk cum cashier he was duty bound to post the withdrawal amount in the pass book of the account holder. If there was no related entry regarding withdrawal of amount found in the pass book of the pass book holder it was to be presumed that he paid these amounts either to fake persons or atleast that the relevant entries in the pass book were he discharged his duties negligently resulting in payment to fake persons.

11. Similarly if any money was deposited by any Account holder in his account and it was settled that the workman acting as clerk cum cashier, he made entry in the pass books regarding deposit of the amount but did not post this amount within the ledger which he was duty bound to do so similarly with records of other parties proved since the dates on which these lapses happened, He was in charge of relevant registers and hence in case of any discrepancy or any default with regard to any entry in the register, there will be a presumption that either he was complacent in the lapse or he was negligent in discharging his duties

12. Learned Counsel for the Management has referred to decision of Hon.the Apex Court in the case of **M.L.Singla vs Punjab National Bank** 2018Scc18, para16,17,18,19:-

16. Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.
17. If the answer to the question on the preliminary issue was that the domestic enquiry is legal and proper, the next question to be considered by the Labour Court was whether the punishment of dismissal from the service is commensurate with the gravity of the charges or is disproportionate requiring interference in its quantum by the Labour Court.
18. If the answer to this question was that it is disproportionate, the Labour Court was entitled to interfere in the quantum of punishment by assigning reasons and substitute the punishment in place of the one imposed by respondent No. 1-Bank. This the Labour Court could do by taking recourse to the powers under Section 11-A of the ID Act.
19. While deciding this question, it was not necessary for the Labour Court to examine as to whether the charges are made out or not. In other words, the enquiry for deciding the question should have been confined to the factors such as-what is the nature of the charge(s), its gravity, whether it is major or minor as per rules, the findings of the Enquiry Officer on the charges, the employee's overall service record and the punishment imposed etc.

And has stated that when the departmental inquiry has been held legal and proper. There remains limited scope for Tribunal because the settled law is that the Tribunal cannot appreciate the evidence recorded during the Management:

20. The limited scope of evaluating the evidence recorded during the inquiry which is left with this Tribunal, it is within its jurisdiction to see whether the findings are based on some evidence or they are perverse. Looking into the angle from this evidence, the finding of the Inquiry Officer with relation to the charge that the workman filled in the withdrawal slip forms and Typed the signatures of the different Account Holders on these different account form is nothing but perverse. No doubt the charge of being negligent in passing and making the payments is nothing but perverse of accounts mentioned in the withdrawal forms without making relevant entries in the respective pass books was negligent on the part of the workman in discharging the duties. The entries in the relevant pass books regarding deposit of amount and not accounting these amounts with the bank as well as not posting the amount in ledger, is more than negligent rather it may amount to misappropriation of these amount deposited by different account holders, these charges are also misconduct in the Bi Partite Settlement and Desai Award. On the basis of the above discussion Issue Hol2 is answered accordingly.

21. **ISSUE NO.3:-** It has been submitted from the side of the learned counsel for the workman is that the punishment is disproportionate to the other co-workman of the Officer cadre names mentioned above in the statement of claims were allowed to avail benefit of voluntary retirement in spite of the fact that criminal case were pending against them with regard to these transactions and departmental inquiries were going on against them which is in violation of Circular of the Bank dated 23-6-2001 and the rules are regarding Voluntary

retirement circulated vide no.4/01 dated 27-1-2001. He has referred to documents Exhibit W-14, W-15, W-16 and W-17 in this respect. These documents show that the Shri K.S. Gandhe, Shri H.S. Vijay Vargeya and Shri M.S. Moyal mentioned as above were given voluntary retirement scheme inspite of the fact that criminal case as well as departmental inquiry was going to start against them with respect to the same transactions or similar transactions. Learned Counsel has referred to Judgment of Hon the Apex Court in the case of Pawan Kumar Agarwal Vs. State Bank of India (2016) 2 SCC (L&S) 184 wherein it has been held that when two employees were found responsible for approving cash credit facilities without disclosing provision of loan, the Branch Manager was imposed punishment of stoppage of one increment and the delinquent employee was imposed. Such action was discriminatory on the part of the Management.

22. Learned counsel for the management has referred to judgment of Hon the Apex Court in case of **Regional Management of Rajasthan State Road Transport Corporation Vs. Sohanlal 2004(8) SCC 218** and has submitted that the workman was found involved in as many as 20 or more transactions of this type, wherein he committed mis-conduct, hence he has been a serial offender. No employer can afford a subordinate who has lost faith with his employer.

23. Before proceeding, the settled proposition of law on the issue requires to be mentioned, which is as follows:-

It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh.

1. Hon'ble Apex Court in **B.C. Chavurvedi v. Union of India, (1995) 6 SCC 749** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

2. In **DG, RPF vs. Sai Babu (2003) 4 SCC 331**, Hon'ble Apex Court has observed that:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works.”

3. In **United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.”

4. In **Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257** Hon'ble Supreme Court reiterated the legal position as follows:

“..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.”

5. In State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

“The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

6. Hon'ble Apex Court in Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101 has observed that :

“The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

7. Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

24. Considering the punishment imposed upon in the light of the above judgments, there is on record papers Exhibit W-10 which shows that this fraud was reported to head quarter. The workman Shri R.D. Chouhan, Dinesh Yadav, and Shri N.D. Shashtri (physical proceedings) were suspended to be involved. Exhibit W-11 is the supplementary report with respect to this circumstances is not by the Branch of the Bank which goes to show that in addition to this Shri K.S. Gadhe, Deputy Manager Shri 'R.K. Tiwari, Deputy Manager Shri M.L. Dubey Shri M.L. Moyal and Shri H.S. Vijayvargya has also passed forged withdrawal on stray occasions while on relieving duties. It has been mentioned here that out of these somewhere given benefit of voluntary retirement and somewhere given lighter punishments.. The point here arises is as to whether the workman also has been found indulged in various transactions within a certain period. It is also submitted by the Management that the Officer Shri D.M. Shastri was also awarded punishment, regarding the same transactions.

25. Hence in the light of the above discussion, the punishment of dismissal awarded to the workman is held proportionate to the charge. Issue No.3 is answered accordingly.

26. **ISSUE No.4:-**

In the light of the findings recorded in Issue No.1,2, and 3, the workman is held entitled to no relief, thus Issue No.4 is answered accordingly.

27. On the basis of the above discussion, following award is passed:-

A. The action of the management as mentioned in the reference is held to be just proper and legal.

B. The workman is held entitled to no relief.

28. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 14-20-2022

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजर, मेसर्स प्लास मार्बल्स, उदयपुर (राजस्थान), के प्रबंधतंत्र के संबद्ध नियोजकों और अध्यक्ष, जनजाति खान मजदूर संघ के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण-सह-श्रम न्यायालय उदयपुर के पंचाट (संदर्भ सं. 21/2015 आई. टी. आर. (सी)) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.12.2022 को प्राप्त हुआ था।

[सं. एल-28011/6/2015- आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1356.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2015 I.T.R.(C) of the Industrial Tribunal-cum-Labour Court, Udaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manager, M/s Plaas Marble, Udaipur (Rajasthan), and The President, Janjati Khan Mazdoor Sangh, which was received along with soft copy of the award by the Central Government on 08.12.2022.

[No. L- 28011/6/2015-IR(M)]

D.K. HIMANSHU, Under Secy.

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

प्रकरण संख्या 21 सन् 2015 I.T.R (C)

अध्यक्ष, जनजाति खान मजदूर संघ—बनाम—मैनेजर मैसर्स प्लास मार्बल्स

अधिसूचना :L-28011/6/2015-IR(M) Dated 22.06.2015

13.08.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 05.08.2022 को लोक-अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

अतः प्रार्थी के इस विवाद में 'No Dispute Award' पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफतर हो ।

सदस्य सचिव

गोपाल बिजोरीवाल, अध्यक्ष

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजर, मेसर्स दात्रिय मार्बल्स, उदयपुर (राजस्थान), के प्रबंधतंत्र के संबद्ध नियोजकों और अध्यक्ष, जनजाति खान मजदूर संघ के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण-सह-श्रम न्यायालय उदयपुर के पंचाट (संदर्भ सं. 45/2015 आई. टी. आर. (सी)) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.12.2022 को प्राप्त हुआ था।

[सं. एल-28011/36/2015-आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1357.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2015 I.T.R.(C)) of the Industrial Tribunal cum Labour Court, Udaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manager, M/s Datriya Marble, Udaipur (Rajasthan), and The President, Janjati Khan Mazdoor Sangh, which was received along with soft copy of the award by the Central Government on 08.12.2022.

[No. L- 28011/36/2015-IR(M)]

D.K. HIMANSHU, Under Secy.

अनुबंध**न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर****I.T.R(C). प्रकरण संख्या 45/2015**

अधिसूचना नम्बर :- L-28011/36/2015-IR(M) दिनांक 22-06-2015

अध्यक्ष, जन जाति खान मजदूर संघ **बनाम** मैनेजर, मै. दात्रिया मार्बल**12.03.2022**

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 25.02.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को भेजी जावे ।

पत्रावली फ़ैसल शुमार होकर दाखिल दफ़तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1358.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिद्धार्थ ग्रीन मार्बल, उदयपुर (राजस्थान), के प्रबंधन के संबद्ध नियोजकों और श्री हरीश, कामगार, के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण-सह-श्रम न्यायालय उदयपुर के पंचाट (संदर्भ सं. 01/2015 आई. टी. आर. (सी) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.12.2022 को प्राप्त हुआ था ।

[सं. जेड -16025/04/2022-आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1358.—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 I.T.R.(C)) of the Industrial Tribunal-cum-Labour Court, Udaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Siddharth Green Marble, Udaipur (Rajasthan), and Shri Harish, Worker, which was received along with soft copy of the award by the Central Government on 08.12.2022.

[No. Z-16025/04/2022 -IR(M)]

D.K. HIMANSHU, Under Secy.

अनुबंध**औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)****पीठासीन अधिकारी — शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)**

प्रकरण संख्या 01/2015 I.T.R. (C)

हरिश पिता श्री नाथु जी मीणा जाति मीणा, उम्र वयस्क,
ड्रिल मैन, मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी,
निवासी गांव कागदर, फला माण्डवा,
तहसील ऋषभदेव, जिला उदयपुर (राज.)

....प्रार्थी

विरुद्ध

मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी,
तहसील ऋषभदेव, जिला उदयपुर (राज.)

...विपक्षी

उपस्थित :-

प्रार्थी की ओर से :- श्री रमेश नन्दवाना, अधिवक्ता
विपक्षी की ओर से :- कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::**दिनांक 11.10.2022**

प्रार्थी हरिश द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक ऐजे-5(95) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया और प्रार्थी द्वारा यह क्लेम पेश किया गया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि प्रार्थी विपक्षी की खदान में दिनांक 01.07.2005 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाईम, ग्रेच्युटी एवं पी.एफ.जैसी न्यूनतम सुविधायें प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से केसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से मई 2014 तक हड़ताल पर थे।

मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर की अध्यक्षता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 07.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 07.05.2014 को प्रार्थी जब काम करने के लिए खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवा हैं तथा उसने पूरी लगन एवं निष्ठा से खान में सेवाएं दी हैं। क्षेत्र के सभी श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 250/-रुपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 371/-रुपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पेय दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 9 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेच्युटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्त का नाटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्त किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 2005 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवायें दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत हैं। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उसे 8 घण्टे के बजाय 12 घण्टे तक काम करना पड़ता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावें तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 24.03.2017 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से हरिश का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी हरिश पिता श्री नाथु जी मीणा जाति मीणा, उम्र वयस्क, ड्रिल मैन, मेसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 07.05.2014 को गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवाकाल सन् 2005 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवाएं दी हैं, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावें तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा नहीं की। प्रार्थी को इस प्रकार दिनांक 07.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की ओर से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तर, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी हरिश पिता श्री नाथु जी मीणा जाति मीणा, उम्र वयस्क, ड्रिल मैन, मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर (राज.) को विपक्षी संस्थान मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर (राज.) द्वारा दिनांक 07.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि भुगतान करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक एजे-5(95)/2014-आरएलसी दिनांक 15.09.2014 के क्रम में भेजा जावें।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सिद्धार्थ ग्रीन मार्बल, उदयपुर (राजस्थान), के प्रबंधन के संबद्ध नियोजकों और श्री मुकेश, कामगार, के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण- सह-श्रम न्यायालय उदयपुर के पंचाट (संदर्भ सं. 02/2015 आई. टी. आर. (सी) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.12.2022 को प्राप्त हुआ था।

[सं. जेड -16025/04/2022- आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1359.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2015 I.T.R.(C)) of the Industrial Tribunal-cum-Labour Court, Udaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Siddharth Green Marble, Udaipur (Rajasthan), and Shri Mukesh, Worker, which was received along with soft copy of the award by the Central Government on 08.12.2022.

[No. Z-16025/04/2022 -IR(M)]

D.K. HIMANSHU, Under Secy.

अनुबंध**औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)****पीठासीन अधिकारी**—शिव कुमार शर्मा (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 02/2015 I . T . R . (C)

मुकेश पिता श्री अमरा जी जाति मीणा, उम्र वयस्क,
वारसो ओपरेटर, मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी,
निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव,
जिला उदयपुर (राज.)

...प्रार्थी

विरुद्ध

मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी,
तहसील ऋषभदेव, जिला उदयपुर (राज.)

...विपक्षी

उपस्थित :-

प्रार्थी की ओर से :- श्री रमेश नन्दवाना, अधिवक्ता

विपक्षी की ओर से :- कोई उपस्थित नहीं—कार्यवाही एक पक्षीय

:: पंचाट ::

दिनांक 11.10.2022

प्रार्थी मुकेश द्वारा अपनी सेवा मुक्ति बाबत सर्वप्रथम शिकायत प्रार्थना पत्र क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के यहां दिनांक 23.07.2014 को प्रस्तुत किया था, जिन्होंने अपने पत्र क्रमांक ऐजे-5(98) 2014-आरएलसी दिनांक 15 सितम्बर, 2014 द्वारा असफल वार्ता प्रतिवेदन The Secretary (Desk Officer) New Delhi को प्रेषित कर दिया और प्रार्थी द्वारा यह क्लेम पेश किया है। जिस पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं विपक्षी को नोटिस जारी किये गये।

प्रार्थी की ओर से प्रस्तुत क्लेम के तथ्य संक्षेप में इस प्रकार है कि प्रार्थी विपक्षी की खदान में दिनांक 01.07.2005 से कार्यरत है। प्रार्थी एवं विपक्षी की खदान में काम करने वाले अन्य श्रमिकों एवं ऋषभदेव क्षेत्र में काम करने वाले श्रमिकों को न्यूनतम मजदूरी, साप्ताहिक अवकाश, ओवर टाईम, ग्रेच्युटी एवं पी.एफ.जैसी न्यूनतम सुविधायें प्राप्त नहीं हो रही थी, जिसके लिए क्षेत्र के खान मालिकों का ध्यान आकर्षित करने की नियत से केसरियाजी क्षेत्र के सभी मजदूर दिनांक 23.01.2014 से मई 2014 तक हड़ताल पर थे।

मई 2014 को खान मालिकों एवं श्रमिकों की यूनियन के मध्य क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर की अध्यक्षता में अन्तरिम समझौता सम्पन्न हुआ जिसके आधार पर ऋषभदेव क्षेत्र के सभी श्रमिकों ने दिनांक 07.05.2014 से वापस काम पर जाने का निश्चय किया। दिनांक 07.05.2014 को प्रार्थी जब काम करने के लिए खदान पर गया तो उसे तथा अन्य श्रमिकों को काम पर लेने से इन्कार कर दिया गया और कहा गया कि तुम लोग यूनियनबाजी करते हो, तुम्हें खान पर नहीं रखेंगे। प्रार्थी ने खान मालिक व मैनेजर को काफी समझाया कि उसकी लम्बी अवधि की सेवा हैं तथा उसने पूरी लगन एवं निष्ठा से खान में सेवाएं दी है। क्षेत्र के सभी श्रमिकों की हड़ताल थी इसलिए वह भी उसमें शामिल रहा। इसके अलावा उसके खिलाफ पूर्व में किसी तरह का कोई आरोप नहीं रहा है तो भी विपक्षी ने उसको काम पर लेने से इन्कार कर दिया व कहा कि यूनियन बनाने वालों को वे किसी भी हाल में मजदूरी नहीं देंगे।

प्रार्थी को सेवा से पृथक किया गया उस समय उसे 250/-रूपये प्रतिदिन के हिसाब से वेतन दिया जाता था जबकि वह अर्द्धकुशल श्रमिक था जिसकी न्यूनतम मजदूरी 350/-रूपये होती थी।

प्रार्थी को सेवा से पृथक किये जाने का कोई कारण नहीं बताया गया तथा उसे अपना पक्ष रखने का अवसर दिये बिना ही सेवा से पृथक कर दिया गया जो प्राकृतिक न्याय के सिद्धान्त से विपरीत है।

विधिनुसार प्रार्थी को सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन दिया जाना आवश्यक था, मगर उसे बिना नोटिस या नोटिस-पेय दिये बिना ही सेवा से पृथक कर दिया गया जो पूर्णतया विधि विपरीत है।

प्रार्थी को जिस समय सेवा से पृथक किया गया तब तक उसने 9 वर्ष की सेवा अवधि पूरी कर ली थी। इस प्रकार की सेवा अवधि पूरी करने वाले कर्मचारी को सेवा से पृथक किये जाने से पूर्व सेवामुक्ति का मुआवजा दिलाया जाना आवश्यक था, मगर उसे न तो सेवा मुक्ति का मुआवजा दिया गया और न ही किसी तरह की ग्रेच्युटी आदि का कोई लाभ दिया गया।

सेवा मुक्ति से पूर्व यह आवश्यक था कि उसे सेवामुक्त का नाटिस देने के साथ साथ सरकार को भी इसकी सूचना विपक्षी देता, मगर उसे सेवामुक्त किये जाने की कोई सूचना विपक्षी द्वारा सरकार को भी नहीं दी गई।

प्रार्थी ने सन् 2005 से लेकर 2014 तक प्रत्येक कलेण्डर वर्ष में 180 दिन से ज्यादा की सेवायें दी हैं। इसके बावजूद भी प्रार्थी को बिना कानूनी प्रक्रिया अपनाये सेवा से पृथक कर दिया है जो पूर्णतया विधि विरुद्ध है।

प्रार्थी को सेवा से पृथक कर दिया गया है, जबकि प्रार्थी के बाद सेवा में आने वाले कामगार अभी भी विपक्षी की खदान में कार्यरत हैं। विपक्षी की खदान में कार्य नियमित रूप से जारी है तथा प्रार्थी के स्थान पर विपक्षी ने दूसरे व्यक्ति को मजदूरी पर रख लिया है।

प्रार्थी से बन्धुआ मजदूर की तरह काम लिया जाता था, उसे न तो न्यूनतम मजदूरी दी जाती थी, न साप्ताहिक अवकाश दिये जाते उसे 8 घण्टे के बजाय 12 घण्टे तक काम करना पड़ता था, मगर 8 से अधिक 12 घंटों तक के समय के काम का भुगतान नहीं दिया जाता था। उसे पारिवारिक पेन्शन जैसी सुविधाएं अनिवार्य होने के बावजूद भी प्रार्थी व अन्य श्रमिकों को इन सुविधाओं से वंचित रखा हुआ था।

इस प्रकार पूर्णतया अमानवीय एवं मध्ययुगीन तरीके से प्रार्थी से काम लिया जाता था। इसी कारण से श्रमिकों ने हड़ताल की थी जिसमें प्रार्थी का शामिल होना विधि विपरीत नहीं था, इसके बावजूद भी उसे हड़ताल में शामिल होने के आधार पर सेवा से पृथक कर दिया गया है।

प्रार्थी को उसकी लम्बी अवधि की सेवाएं होने के बावजूद भी उसे सेवा से पृथक कर दिया है। ऐसी स्थिति में उसके सामने जीवनयापन का गम्भीर संकट उत्पन्न हो गया है तथा वर्तमान में उसके पास आजीविका का कोई सहारा नहीं रहा है।

अन्त में निवेदन किया गया कि विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 को की गई सेवा मुक्ति को अवैध एवं विधि विपरीत घोषित किया करावे तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरता वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावे।

विपक्षी की ओर से कोई उपस्थित नहीं हुआ उसकी ओर से कोई जबाब या साक्ष्य पेश नहीं हुई अतः विपक्षी के विरुद्ध दिनांक 24.03.2017 को एक पक्षीय कार्यवाही अमल में लाई गई।

प्रार्थी पक्ष की ओर से मुकेश का शपथ पत्र पेश हुआ।

प्रार्थी अभिभाषक की एक पक्षीय बहस सुनी गई। पत्रावली का अवलोकन किया गया।

“अब यह देखा जाना है कि विपक्षी मेसर्स सिद्धार्थ ग्रीन मार्बल, मसारा की ओबरी, तहसील ऋषभदेव, जिला उदयपुर द्वारा प्रार्थी मुकेश पिता श्री अमरा जी जाति मीणा, उम्र वयस्क, वारसो ओपरेटर, मेसर्स सिद्धार्थ ग्रीन मार्बल, मसारा की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर को दिनांक 07.05.2014 को गलत व मिथ्या आरोप लगा कर सेवा से पृथक किया जाना उचित एवं वैध है ? यदि नहीं, तो प्रार्थी क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता का तर्क है कि प्रार्थी ने विपक्षी के यहां अपनी नियुक्ति दिनांक से सेवा पृथक दिनांक तक निरन्तर कार्य किया। प्रार्थी ने अपने सेवाकाल सन् 2005 से लेकर 2014 तक प्रत्येक कैलेंडर वर्ष में 180 दिन से ज्यादा की सेवाएं दी हैं, लेकिन विपक्षी संस्थान द्वारा गलत व मिथ्या आरोप लगा कर सेवा पृथक कर दिया व सेवा से पृथक करने से पूर्व एक माह का नोटिस या नोटिस के बदले एक माह का वेतन नहीं दिया गया। अतः विपक्षी द्वारा प्रार्थी की दिनांक 07.05.2014 से की गई सेवा मुक्ति को अवैध एवं विधिविपरीत घोषित करावें तथा प्रार्थी को विपक्षी के नियोजन में निरन्तरत, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

प्रार्थी ने अपने शपथ पत्र में क्लेम प्रार्थना पत्र के तथ्यों को शपथ पूर्वक दोहराया है। विपक्षी के विरुद्ध कार्यवाही एक तरफा होने से प्रार्थी के उक्त शपथ पत्र के खण्डन में कोई साक्ष्य पेश नहीं हुई है।

प्रार्थी की ओर से प्रस्तुत प्रार्थनापत्र एवं शपथपत्र के अवलोकन से यह स्पष्ट होता है कि प्रार्थी निरन्तर सेवा में रहा है। प्रार्थी को विपक्षी ने सेवापृथक करने के पूर्व कोई आरोप पत्र या चेतावनी पत्र नहीं दिया न ही उसे सुनवाई का कोई अवसर दिया तथा न ही कोई जांच कार्यवाही की गई। प्रार्थी को सेवापृथक करने के पूर्व कोई मुआवजा राशि अदा नहीं की। प्रार्थी को इस प्रकार दिनांक 07.05.2014 को अनुचित एवं अवैध रूप से सेवापृथक किये जाने पर उसने केन्द्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के समक्ष दिनांक 23.07.2014 को शिकायत प्रस्तुत की, जिस पर विपक्षी को नोटिस प्रेषित किया गया परन्तु वह उपस्थित नहीं हुआ और न ही कोई जवाब ही पेश किया।

प्रार्थी द्वारा प्रस्तुत उक्त मौखिक व दस्तावेजी साक्ष्य का विपक्षी की ओर से कोई खण्डन नहीं हुआ है, इसलिये प्रार्थी की उक्त साक्ष्य को न मानने का कोई आधार नहीं है। सेवा से पृथक किये जाने से पूर्व प्रार्थी को कोई नोटिस या क्षतिपूर्ति राशि का भुगतान किया गया हो, ऐसी भी कोई साक्ष्य विपक्षी की ओर से नहीं आई है। उक्त आधार पर प्रार्थी को सेवा पृथक किया जाना अनुचित एवं अवैध है।

अब यह देखना है कि प्रार्थी इस अवैध सेवा मुक्ति के कारण क्या राहत पाने का अधिकारी है ?

प्रार्थी अधिवक्ता की ओर से इस सम्बन्ध में यह तर्क रहा है कि प्रार्थी को विपक्षी के नियोजन में निरन्तरत, वेतन वरियता एवं अन्य लाभों के साथ पुनः रखवाये जाने का पंचाट पारित फरमावें।

इस प्रकरण में न्यायालय इस मत का है कि प्रार्थी सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि प्राप्त करने का अधिकारी है साथ ही विपक्षी प्रार्थी को सेवा की निरन्तरता के साथ पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो क्या लाभ प्राप्त करता वे सभी लाभ भी प्राप्त करने का अधिकारी है।

उक्त विवेचन के आधार पर एक पक्षीय पंचाट इस प्रकार पारित किया जाता है कि —

प्रार्थी मुकेश पिता श्री अमरा जी जाति मीणा, उम्र वयस्क, वारसो ओपरेटर, मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, निवासी गांव कागदर, फला माण्डवा, तहसील ऋषभदेव, जिला उदयपुर (राज.) को विपक्षी संस्थान मैसर्स सिद्धार्थ ग्रीन मार्बल, मसारों की ओबरी, तहसील ऋषभदेव, जिला उदयपुर (राज.) द्वारा दिनांक 07.05.2014 को सेवा पृथक किया जाना उचित एवं वैध नहीं है।

इसलिये इस अवैध सेवा मुक्ति के कारण विपक्षी संस्थान प्रार्थी को सेवा की निरन्तरता के साथ तीन माह की अवधि में पुनः सेवा में लेवे तथा यदि वह सेवा में होता तो जो लाभ प्राप्त करता वे सभी लाभ भी दिये जावे साथ ही विपक्षी प्रार्थी को सेवा पृथक किये जाने की दिनांक 07.05.2014 से पुनः सेवा में लिये जाने की तिथि तक पिछले वेतन के रूप में 50 प्रतिशत राशि भुगतान करे, अन्यथा, उक्त राशि पर आदेश की दिनांक से 7 प्रतिशत वार्षिक दर से ब्याज देय होगा।

एक पक्षीय पंचाट प्रकाशनार्थ समुचित सरकार क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के पत्र क्रमांक ऐजे-5(98)/2014-आरएलसी दिनांक 15.09.2014 के क्रम में भेजा जावें।

शिव कुमार शर्मा, न्यायाधीश

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1360.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स राणावत ग्रीन मार्बल, उदयपुर (राजस्थान), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रकाश मीणा, कामगार, के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण- सह-श्रम न्यायालय उदयपुर के पंचाट (संदर्भ सं. 01/2017 आई. टी. आर. (सी)) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.12.2022 को प्राप्त हुआ था।

[सं. जेड -16025/04/2022-आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1360.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.01/2017 I.T.R.(C)) of the Industrial Tribunal cum Labour Court, Udaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Ranawat Green Marble, Udaipur (Rajasthan), and Shri Prakash Meena, Worker, which was received along with soft copy of the award by the Central Government on 08.12.2022.

[No. Z-16025/04/2022 -IR(M)]

D.K. HIMANSHU, Under Secy.

अनुबंध

न्यायालय औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

I.T.R (C)- प्रकरण संख्या 01 / 2017

प्रकाश मीणा बनाम मेसर्स राणावत ग्रीन मार्बल

12.03.2022

प्रार्थी अभिभाषक उपस्थित ।

प्रार्थी अभिभाषक ने प्रकरण में दिनांक 28.02.2022 को लोक अदालत की भावना से प्रेरित होकर Not Press किया तथा कोई कार्यवाही नहीं चाही । प्रार्थी पक्ष द्वारा कार्यवाही नहीं चाहने के कारण अब पक्षकारान के मध्य कोई विवाद शेष नहीं रहता है ।

प्रार्थी के इस विवाद में 'No Dispute award' कोई विवाद नहीं का पंचाट पारित किया जाता है ।

सूचना प्रकाशनार्थ भारत-सरकार को (उप मुख्य श्रम आयुक्त केन्द्रीय, अजमेर के पत्र क्रमांक ऐजे-5(105/2014-आरेएलसी दिनांक 15.09.2014 के क्रम में) भेजी जावे ।

पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो ।

सदस्य

लोक अदालत

अध्यक्ष,

लोक अदालत

शिव कुमार शर्मा, न्यायधीश

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, हिन्दुस्तान ज़िंक लिमिटेड, भीलवाड़ा (राजस्थान), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री महावीर प्रसाद माली, कामगार, के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण-सह- श्रम न्यायालय भीलवाड़ा के पंचाट (संदर्भ सं. 7/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.12.2022 को प्राप्त हुआ था।

[सं. जेड-16025/04/2022 -आईआर(एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1361.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2019) of the Industrial Tribunal cum Labour Court, Bhilwada as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Hindustan Zinc Limited, Bhilwada (Rajasthan), and Shri Mahavir Prasad Mali, Worker, which was received along with soft copy of the award by the Central Government on 08.12.2022.

[No. Z-16025/04/2022 -IR(M)]

D.K. HIMANSHU, Under Secy.

अनुबंध**औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, भीलवाड़ा (राज0)::****पीठासीन अधिकारी :** श्री सुशील कुमार शर्मा, (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या : 7 सन् 2019 आई.टी.आर.

श्री महावीर प्रसाद माली पुत्र श्री लक्ष्मण माली,

नि.—आगूचा, तह.—हुरडा, जिला—भीलवाड़ा।

...प्रार्थी / श्रमिक

बनाम

निदेशक, हिन्दुस्तान जिंक लि0,

रामपुरा—आगूचा माईन्स, जिला— भीलवाड़ा।

...विपक्षी / नियोजक

उपस्थित:प्रार्थी की ओर से कोई हाजिर नहीं।
कोई हाजिर नहीं।

...विपक्षी की ओर से

:: पंचाट ::

दिनांक 26.8.2022

श्रम एवं रोजगार मंत्रालय, भारत सरकार की अधिसूचना क्रमांक: एफ नं. ए जे-08/2/45/2019-आई.आर दिनांक 26.11.2019 के द्वारा निम्न विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया—

'Whether the action of the management of Hindusthan Zink Limited , Rampura Agucha Mines,Rampura ,Distt. Bhilwara in giving premature Retirement To Shri Mahaveer prasad Mali S/O Shri Laxman Mali,Asstt.Foreman at the age of 58 years instead of 60 years w.e.f 31.03.2019 is legal and justified? If not, whether the demand of the workman for his reinstatement upto the age of 60 years or payment of wages ,allowence and other benefits for 02 years is legal and justified?if yes,to what relief the concerned workmen is entitled and from which date.

विवाद प्राप्त होने पर पक्षकारों को नोटिस जारी कर तलब किया गया।

आज प्रार्थी हाजिर नहीं हैं। प्रार्थी की तामील रजिस्टर्ड डाक से भेजी जा चुकी है। तामील भेजे एक माह से अधिक का समय भी पूर्ण हो गया है। तामील अदम तामील भी नहीं लौटी है। अतः तामील पर्याप्त मानी जाती है। प्रार्थी बावजूद तामील हाजिर नहीं है। अतः ऐसा प्रतीत होता है कि उसकी इस मामले में कोई रुचि नहीं है तथा वह प्रकरण में कोई कार्यवाही नहीं चाहता है। अतः 'कोई विवाद नहीं रहा' आशय का पंचाट जारी किया जाता है।

पंचाट की प्रति केन्द्र सरकार को प्रकाशनार्थ भेजी जाये।

सुशील कुमार शर्मा, न्यायाधीश

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, हिन्दुस्तान जिंक लिमिटेड, भीलवाड़ा (राजस्थान), के प्रबंधन के संबद्ध नियोजकों और श्री लादूलाल प्रजापत, कामगार, के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण-सह-श्रम न्यायालय भीलवाड़ा के पंचाट (संदर्भ सं. 4/2019) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.12.2022 को प्राप्त हुआ था।

[सं. जेड -16025/04/2022-आईआर(एम)]

डी.के. हिमांशु, अवसर सचिव

New Delhi, the 15th December, 2022

S.O. 1362.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2019) of the Industrial Tribunal cum Labour Court, Bhilwada as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Hindustan Zinc Limited, Bhilwada (Rajasthan), and Shri Ladulal Prajapat, Worker, which was received along with soft copy of the award by the Central Government on 08.12.2022.

[No. Z-16025/04/2022 -IR(M)]

D.K. HIMANSHU, Under Secy.

अनुबंध

:: औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, भीलवाड़ा (राज.)::

पीठासीन अधिकारी : श्री सुशील कुमार शर्मा, (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या : 4 सन् 2019 आई.टी.आर.

श्री लादूलाल प्रजापत पुत्र श्री प्रेमराज प्रजापत,
नि०—ब्राह्मणों की सरेडी,वाया—मोड का निम्बाहेडा,
तह०—आसींद,जिला—भीलवाड़ा।

...प्रार्थी / श्रमिक

बनाम

निदेशक, हिन्दुस्तान जिंक लि., रामपुरा—आगूचा माईन्स,जिला— भीलवाड़ा।

...विपक्षी / नियोजक

उपस्थित:

प्रार्थी की ओर से कोई हाजिर नहीं।
की ओर से कोई हाजिर नहीं।

विपक्षी

:: पंचाट ::

दिनांक 26.8.2022

श्रम एवं रोजगार मंत्रालय, भारत सरकार की अधिसूचना क्रमांक : एफ नं. ए जे-08/2/42/2019 -आई. आर दिनांक 26.11.2019 के द्वारा निम्न विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया—

'Whether the action of the management of Hindusthan Zink Limited , Rampura Agucha Mines,Rampura ,Distt. Bhilwara in giving premature Retirement To Shri Ladu Lal Prajapat S/O Shri Prem Raj Prajapat,Asstt.Foreman at the age of 58 years w.e.f 30.04.2019 instead of 60 years is legal and justified?If not,whether the demand of the workman for his reinstatement upto the age of 60 years or payment of wages ,allowence and other benefits for 02 years is legal and justified?if yes,to what relif the concerned workmen is entitled and from which date.

विवाद प्राप्त होने पर पक्षकारों को नोटिस जारी कर तलब किया गया।

आज प्रार्थी हाजिर नहीं हैं। प्रार्थी की तामील रजिस्टर्ड डाक से भेजी जा चुकी है। तामील भेजे एक

माह से अधिक का समय भी पूर्ण हो गया है। तामील अदम तामील भी नहीं लौटी है। अतः तामील पर्याप्त मानी जाती है। प्रार्थी बावजूद तामील हाजिर नहीं है। अतः ऐसा प्रतीत होता है कि उसकी इस मामले में कोई रुचि नहीं है तथा वह प्रकरण में कोई कार्यवाही नहीं चाहता है। अतः 'कोई विवाद नहीं रहा' आशय का पंचाट जारी किया जाता है।

सुशील कुमार शर्मा, न्यायाधीश

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1363.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबंध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ स. 91/2013) को प्रकाशित करती है !

[सं. एल-12012/63/2013- आई आर(बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 91/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/63/2013– IR(B-1)]

A.K. YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/91/2013

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

Shri HarjulalDhimer,
S/o shri Ganga Prasad Village Simaria
District Pawai,
District Panna(MP)

...Workman

Versus

The Branch Manager,
State Bank of India,
Simaria Branch,
District Panna(MP)

...Management

AWARD

(Passed on 11-10-2022.)

As per letter dated 4-10-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/63/2013-IR(B-1) The dispute under reference relates to:

“Whether the action of the management of State Bank of India , Simariya Branch district, Panna(MP) in terminating the services of Shri HarjulalDhimer, Ex-Canteen Boy/Messenger w.e.f. February,2012 without following the procedure/provision of the Industrial disputes Act,1947 is valid reasonable and fair? To what relief he is entitled to and from which date? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was first appointed by the Branch manager of Simariya Branch in Panna district as a daily water canteen boy and messenger on 1-9-1995 and since then he continuously worked as messenger in the branch till 7-2-2012. His services were terminated under an oral of Management without any notice or compensation. He had continuously worked for 240 days and more in every year including the year preceding his termination, hence the termination of his services is arbitrary, unjustified and illegal. He has preferred a Writ Petition No.9656/2012 before Hon'ble High Court of M.P. which was finally disposed by order dated 7-12-2012 with an observance that he could seek relief before proper forum. According to the workman, the principle of first come and last go was not followed in his case which is in violation of Section 25F of the Industrial Disputes Act, 1947. The work which he has been doing is of permanent nature. It is being done by another person in the Bank. Accordingly it has been prayed that holding his termination against law the workman be held entitled to reinstatement with all back wages and benefits.

3. The case of the Management in the written statement of defense filed is mainly that there is a Local Implementation Committee which is Welfare Committee of staff members. The Branch Manager of the branch is the President of the Committee and the Union Representative is the Secretary and there are one or more staff members in the Committee. The bank provides subsidy to the Committee for doing catering and canteen service of the staff members. The said Committee recruits canteen boy and the Bank has no say in its recruitment. The work is also not supervised by the Bank, rather it is controlled and supervised by the Committee. It is further the case of the Management that the workman was engaged as a canteen boy in the staff canteen in the year 1992-1994 additionally he owns a generator which he had made available to the Bank on contract basis for which the Bank used to pay him. According to the Management Bank the workman never served as an employee of the Bank in any capacity, hence his termination is not against law. Accordingly, it has been prayed that the reference be answered against the workman.

4. In its rejoinder, the workman has mainly reiterated his case and has further stated that he had supplied generator service to the Management Bank for which the Bank used to pay him its charges.

5. In evidence, the workman has filed its affidavit as his Examination in Chief. He has been cross-examined. He has proved photocopy documents Exhibit W-1, letter of Branch Manager dated 31-3-1997, Certificate of Branch Manager to the Regional Manager dated 6-4-2009 reengaging the workman to be appointed as messenger Exhibit W-3, certificate issued by Branch Manager dated 5-6-2009 Exhibit W-4 Bill of payment regarding work as messenger Exhibit W-5 and T.A.Bill Exhibit W-6.

6. In spite of various opportunities given, the Management has not filed any documents. One Management witness Anand Lochan dubey, Branch Manager has filed his affidavit. He could not appear for cross-examination.

7. I have heard arguments of learned counsel for workman Shi Habiullah and Shri Ashish Shroti, learned counsel for the management. I have gone through the written arguments filed on behalf of the management.

8. After perusal of record in the light of rival arguments, following issues come up for determination, in the case in hand:-

- 1) **Whether the workman has successfully proved his engagement with the Management Bank for a period of 240 days or more in the year, preceding the date of his termination.?**
- 2) **Whether the termination of service of the workman is in violation of Section 25G and 25F of the Industrial Disputes Act, 1947?**
- 3) **Subject to the findings on Issue No.1 and Issue No.2, whether the workman is entitled to any relief?**

9. ISSUE NO.1:-

The respective pleadings of the parties on this issue has been detailed earlier. Section 25B of the Industrial Disputes Act 1947 requires to be reproduced and is being reproduced as under:-

Section 25 B:-

Definition of continuous service.-

(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 authorised 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 of 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) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

10. The workman has stated in his affidavit which is examination in chief that he had worked as a Messenger since 1-9-1995 i.e. date of his first appointment as a daily messenger till the date of his termination i.e. 7-2-2012 when his services were orally terminated by the management. He has further stated that he had continuously worked for 240 days as a messenger in every year. He was paid Rs.3000/- for this job which is credited to his saving bank account on monthly basis. Earlier he was paid Rs.1500/- per month. The documents filed and proved by the workman Exhibit W-1 is the bank documents dated 31-3-1997 seeking permission by the Branch Manager to engage the workman as permanent messenger. Exhibit W-2 is the certificate issued by the Bank Manager regarding the work of the workman as messenger. Exhibit W-3 dated 6-4-2009 is a letter sent by the Branch Manager to the Regional Manager stating that the workman has been working as a messenger in the branch also that there was no messenger in the Branch. The workman is a good and honest person Exhibit W-4 and Exhibit W-5 and Exhibit W-6 also corroborates the case of the workman. ON the other hand though there is no evidence to the contrary from the side of the Management except its pleadings, hence on the basis of above discussion, it is held that the workman in the case in hand has successfully proved his engagement as a messenger for 240 days and more in every year including the year preceding the date of his termination. **Issue No.1 is answered accordingly.**

11. **Issue No.2:-**

As it is apparent from the pleadings, the workman has rested his case on two grounds, firstly his termination is in violation of Section 25G of the Industrial Disputes Act because no notice or compensation was given, secondly the principle of first come and last go was not followed, hence his termination was in violation of Section 25F of the Industrial Disputes Act,1947.

11. Section 25G and Section 25F of the Industrial Disputes Act are being reproduced as follows:-

25F. 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: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[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 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

12. As regards the first ground, it is the case of the workman that no notice or compensation was given to him before termination of his services. He has corroborated this allegation in his statement on oath. The Management has filed no evidence to rebut this allegation. Hence holding that no notice or compensation was given to the workman before termination of his services, his termination is held in violation of Section 25G of the Industrial Disputes Act,1947. As regards the second ground, though there is allegation that the workman has failed to give details of employees who joined after him as a daily wager and is continuing even after his termination, hence the second ground is held not proved. **Issue No.2 is answered accordingly.**

13. **ISSUE NO.3:-**

14. On the basis of the findings recorded, the issue arises as to what relief the workman is entitled.

15. Learned Counsel for the Management has vehemently contended that since the workman was not appointed against a sanctioned vacancy, following recruitment process, rather he was a daily wager, a lump sum compensation payable to him in lieu of all his claims would meet the ends of justice.

16. On the other hand, learned counsel for the workman has submitted that the workman has been continuously working since 1995 to 2012 i.e. for a period of 18 years. There are vacancies of Messenger still available in the Bank, hence, he is entitled to be reinstated with back wages. Learned Counsel has referred to a recent decision of Hon'ble Apex Court in the case of **JeetuBha Khansangji Jadeja Vs. Kachh District Panchayat** Civil Appeal No.6890/2022 i.e. SLP(Civil) No.8393/2022. In this case, the workman was a daily wager. The Award of Labour Court reinstating him was upheld by Hon'ble the Apex Court. Hon'ble the Apex Court has relied on its previous judgments and has up held the Award of Labour Court reinstating the workman who was the casual worker with the Management, first appointed on 5-10-1992 and terminated from service on 30-12-2002. As it appears from the perusal of judgment of the referred cases, it was found that the workman junior to the appellant were retained in service and his services were terminated by the Management. Keeping this fact in mind, Hon'ble the Apex Court confirmed the reinstatement of the workman. There is an allegation that principle of first come and last go was not followed in the case of the applicant workman but this allegation has been held not proved, hence the referred case can be easily distinguished from the case in hand. In the light of the above, discussion, I am of the considered view that a lump sum compensation quantified at Rs.3,00,000/- in lieu of all the claims of the workman will meet the ends of justice, in my view in the case in hand. **Issue No.3 is answered accordingly.**

17. On the basis of the above discussion, following award is passed:-

- A. **The action of the management“of State Bank of India , Simariya Branch district, Panna(MP) in terminating the services of Shri Harjulal dhimer, Ex-Canteen Boy/Messenger w.e.f. February, 2012 without following the procedure/provision of the Industrial disputes Act,1947 is held not just and proper.**
- B. **The workman is held entitled to a lump sum compensation of Rs.3,00,000/-(rupees three lakh) from the date of publication of Award in the Official Gazette, failing which interest @6% per annum from the Date of publication till the date of receipt of notification of Award.**

18. Let the copies of the award be sent to the Government of India, Ministry of Labour& Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE 11-10-2022

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1364.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुलसचिव, डॉ. हरि सिंह गौर विश्वविद्यालय, सागर, (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, डॉ. हरि सिंह गौर (मध्य.), विश्वविद्यालय कर्मचारी संघ, सागर, (म.प्र.), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. CGIT/LC/R/78/2018) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/11/2022 को प्राप्त हुआ था।

[सं. एल-42011/94/2018- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1364.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/78/2018) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Dr. Hari Singh Gaur University, Sagar, (M.P.) and The President, Dr. Hari Singh Gour(Cent.), University Employ Union, Sagar,(M.P.), which was received along with soft copy of the award by the Central Government on 26/11/2022.

[No. L- 42011/94/2018- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/78/2018

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

Shri Sandeep Balmiki
 President
 Dr. Hari Singh Gour(Cent.)
 University Employ Union
 Resident of Purvyau Touri,,
 Sagar, M.P. – 470001.

Versus

The Registrar
 Dr. Hari Singh Gaur University
 Sagar, M.P. – 470003.

AWARD
(Passed on this 20th day of October-2022)

1. As per letter dated 14/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42011/94/2018-IR(DU). The dispute under reference relates to:

"क्या प्रबंधन रजिस्ट्रार डॉ हरीसिंह गौर विश्वविद्यालय (केन्द्रीय विद्यालय) सागर मप्र के द्वारा श्री राजेंद्र सिंह ठाकुर, भूतपूर्व दैनिक वेतन भोगी डाटा प्रविष्टि आपरेटर / सहायक ग्रेड-3 को दिनांक 07.06.2013 से नियोजन में रखने पश्चात स्थाई कर्मचारी के तौर पर डाटा प्रविष्टि आपरेटर/ सहायक ग्रेड-3 के पद पर वर्गीकरण न करते हुए उनके वास्तविक पद का वेतनमान प्रदान न करना एवं दिनांक 25.10.2017 से उनकी सेवाएं समाप्त किये जाने की कार्यवाही न्यायोचित है ? यदि नहीं तो संबंधित कर्मचारी किस अनुतोष का हकदार है ?"

2. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

3. The case of the workman Union, as put up in their statement of claim, is that is an Association of persons working for the protection of the interest of employees working for the University. It has authority to raise a dispute and contest the case on behalf of the workman who has is a member of the Union. The workman was initially appointed as Computer Operator and continued as daily wager/muster roll employee, grade three post since his initial appointment in the year 2013 . He approached the Hon'ble High Court of M.P., when there was reduction of pay by way of a writ petition. Hon'ble High court directed the University to give benefit of minimum pay scale notified to the post . The University was declared a Central University vide Central University Act 2009. Before that, it was a State University as per provisions of M.P. Vishswavidyaklaya Adhiniyam 1973. The workman was initially appointed as a Computer Operator on 17-6-2013 and started discharging his duties as Computer Operator. The said appointment was with the prior approval after creation of the post. The said workman has been continuously working since the date of his first appointment on 17-6-2013 till 25-10-2017 when his services were terminated without preparation of any seniority list, without following the principles of last come first go and also without any notice or compensation. According to the applicant workman, the said post are still available with the second party University and is of permanent nature. Further, since the applicant workman possessed the necessary qualification for the post of data entry operator/lower division clerk, he is therefore, entitled for classification on the aforesaid post with grade pay of 1900/- per month with effect from 17-6-2013. He is also further entitled to be reinstated with full back wages and benefits setting aside his retrenchment as in spite of his best efforts he could not get suitable job for him till now.

4. According to the workman Union, the duties which were discharged by the applicant workman is of Class-III post in the University. When the University was a State University a resolution was passed by the Executive Council of the University in its meeting dated 1-5-2008 by exercising powers under Section 24 of the M.P. Vishwavidyalaya Adhiniyam, 1973. It was resolved that all the daily wagers/muster roll employees, employed will be entitled to minimum of pay and scale and allowances which is applicable to the Grades in which they were discharging their duties. The Executive council further adopted the recommendation of other pay recommendations of Teachers/Officers and employees vide its resolution dated 22-8-2009. The University

was declared a Central University with the passage of notification of Central Universities Act, 2009. Section 4D of this Act provided that every person earlier employed by the University shall hold his office on same remuneration and terms and conditions and rules and privileges unless it is altered in consequence with the statutory rights. The Applicant Workman and the other similarly situated employees who were required to discharge duties equivalent to Class-III employees were illegally downgraded to Class-IV employees. It is further the case of the workman Union that the university has not recruited regular employees in Class-III and Class-IV for the last several years and this work is being discharged by muster roll employees even today also. Hence, the action of the University denying standard classification pay scale of Grade-III to employees and making payment to all at the same rate of pay irrespective of work discharged by them is illegal and arbitrary. It is in this back drop that Hon'ble High Court of M.P. directed the University to pay the applicant workman and similarly situated petitioners minimum pay in the scale of pay notified for the post against which they are discharging their duties vide its order dated 26-9-2011 passed in W.P.No.4520/2010. This order has been affirmed by Hon'ble the High Court vide its order dated 26-7-2013 passed in S.L.P.No.18342-43/2013. Further, it has been stated that in order to circumvent the order of Hon'ble High Court and Hon. Supreme Court, the University has not carried proper classification and fitment. Since the applicant workman has not been given proper classification and fitment and deprived them of all the benefits which is violation of standing order applicable over the University. Accordingly, it has been prayed that holding the termination of the workman against law, he be held entitled to be reinstated with all back wages and benefits and also be held entitled for permanent classification in Grade-III for the post of Computer Operator, Grade-III with Grade Pay Scale of Rs.1900/- per month w.e.f. completion of six months from the date of completion of six months of his application or since 17-6-2013 with arrears and interest.

5. IN the written statement of defence by the University, it has been pleaded that the allegation of the workman that he is discharging his duties on vacant and sanctioned post is incorrect. To obtain the status of a permanent employee a person must be employed in terms of statutory rules. The applicant workman was simply a daily wagger/temporary employee on outsourcing basis through a contractor, who cannot hold the post unless he is appointment in terms of the Act and rules framed there under. An appointment may in violation of mandatory provisions of a statute is nullity. A persons appointed in such a manner cannot claim any benefit and rights regarding regularization and permanency in service in the light of Principle laid down in the case of State of Karnataka & Another Vs. Uma Devi and Others (2006) 4 SCC 1. As regards the order of Hon'ble High Court and Hon'ble the Apex Court directing minimum pay in the scale, it is the case of the Management that the this order has been complied with by the management of University. The Competent Authority in the University has constituted a Committee to examine the case of daily wagers/muster roll employees discharging the duties of Class-III and on the basis of the records available the daily wage and muster roll employees have been given pay entitled to Class-III employees and Dearness Allowance. Accordingly the management has requested that the reference be answered against the workman Union. It is further the case of the management that the applicant workman was disengaged following the rules. The Management has thus prayed that the reference be answered against the applicant workman.

6. The workman Union has filed a rejoinder wherein it has denied the case of management and has further reiterated its case.

7. The workman has filed vide list 15 documents and has proved as Exhibit W-1 to W-14, to be referred to as and when required. The workman Union has further filed and proved photocopy of marksheets and educational qualification documents of the workman Rajendra Singh Thakur which are collectively marked Exhibit W-15 to be referred to as and when required.

8. The workman Union has filed affidavit as his examination in chief. Opportunity of cross-examination of this witness was given to management. They did not avail this opportunity, hence opportunity of cross-examination of this witness is closed.

9. The management has not examined any witness, rather it has filed two photocopy office orders dated 5-5-2014 and 2-11-2016 both admitted by workman Union, marked as Exhibit M1 to M2 respectively.

10. I have heard arguments of Mr. Uttam Maheshwari, learned counsel for the workman Union. The management did not appear at the time of arguments. The workman Union has filed written arguments also which is part of the record. No written arguments has been filed by the Management. I have gone through the record as well.

11. On perusal of record in the light of arguments, the following points/issues come up for determination :-

- 1) **Whether the University Dr. Hari Singh Gaur University is an industry as defined under Section 2(J) and the applicant workman is a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947?**

2. Whether the applicant workman was recruited as a daily wager/muster roll employee against sanctioned vacancy, following recruitment procedure and also whether he had the requisite qualification for the job he was recruited?
3. Whether the applicant workman was initially recruited through contractor as a contractor worker on outsourcing?
4. Whether the workman has been in continuous service of the management from the date of his first appointment till date and whether his termination is against law?
5. Whether the applicant workman is entitled to be classified as Category-III/Class-III employee for the post of Assistant Librarian/Assistant Grade-III, if yes from which date?

12. ISSUE NO.1:-

Before proceeding it is necessary to enumerate Section 2(J) and Section 2(S) of the Industrial Disputes Act, 1947 as below:-

Section 2(S)-

“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 prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred 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.]

2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

13. In the case of **Rajkumar Vs. Director Education Civil appeal No.1020/2011** Hon’ble the Apex Court has held that educational institution is industry as defined under Section 2(J) of the Act. As regards the University, Hon’ble the Apex court has referred to the Judgment of Seven Judges Bench in the case of **Bangalore Water Supply & Sewerage Board Vs. R.Rajappa and Others, (1978) Scr (3) 207**, the relevant portion is being reproduced as follows:-

“The issue whether educational institution is an ‘industry’, and its employees are ‘workmen’ for 4 (1997) 5 SCC 737, the purpose of the ID Act has been answered by a Seven-judge Bench of this Court way back in the year 1978 in the case of Bangalore Water Supply (supra). It was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen. It was held as under: “The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not ‘workmen’ and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesi, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may

have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations.” (emphasis laid by this Court)

14. Hence, in the light of aforesaid judgment, the Dr. Hari Singh Gaur University non teaching staff is held to be workmen as defined under Section 2(S) and 2(J) and for this purpose, the University is held to be an Industry as defined under Section 2(J) of the Industrial Disputes Act, 1947. **Issue No.1 is answered accordingly.**

15. **ISSUE NO.2 & 3:-**

Since these issues are inter related, they are being taken together.

According to the workman Union, the applicant workman was initially appointed on 17-6-2013 on the post of data entry operator which was a duly sanctioned and vacant post. He had the requisite qualification for the post he was a Bachelor in Arts in short hand and typing certificate in Hindi and English also Post Graduate Diploma in Computer Operations. It is in the evidence of the workman that University had a duly constituted Selection committee headed by then Vice Chancellor, the Registrar and other Professors were the Members of the Committee who after initial scrutiny, of his application and documents filed by him in response to vacancy notification interviewed him personally and thereafter his name figured in the list of selected candidates. The workman witness further stated that the case of the management that the workman was an outsourced employee is against fact. He further states in his evidence that inspite of artificial breaks of one day after every 59 days he had completed 240 days in every year including the year preceding the date of his termination. He also states that the Management did not prepare any seniority list and did not follow the principle of first come and last go, also did not pay any compensation or notice. He also states that when he had raised a dispute with the Assistant Labour Commissioner, the Management illegally terminated his services in violation of section 33 of Industrial Disputes Act, 1947. This statement of workman which is on oath is uncross-examined. Exhibit W-15 which is copy of his educational qualifications goes to show that he is a graduate having required diploma in shorthand and typing in Hindi and English and also had computer diploma at the time when he was first appointed.

The case of Management is mainly that the workman was never engaged by the University. He was an outsourced employee. The Management does not disclose the name of the contractor through which the workman was outsourced in its pleadings nor has lead any evidence oral or documentary as to who was the contractor through which the services of the workman was outsourced.

Secondly, the RTI documents mentioned above show that the payment to the workman was done by the University itself and not through any contractor. Also that the provident fund of this workman was also deposited by the Management itself, the RTI documents regarding the attendance of the workman corroborate his case that he has worked continuously for 240 days in every year including the year preceding the date of his termination.

As pleaded by Workman Union, the management neither prepared any seniority list nor has followed the principle of first come last go also that no notice or compensation was given to the workman on his retrenchment. The workman witness has corroborated this allegation in his affidavit as his Examination in Chief. Management has not filed any document or evidence in rebuttal, hence, this allegation of the workman Union also stands proved.

Section 25B, 25F, Section 25G and Section 25H of the Industrial Disputes Act, 1947 and Rules 76 and 77 of Industrial Disputes Central Rules, 1957 are being reproduced as follows:-

Section 25 B:-

Definition of continuous service.-

(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 authorised 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 of 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) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. 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: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[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 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

76. Notice of retrenchment.—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service The Industrial Disputes (Central) Rules, 1957 for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Central Government, the Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) and the Employment Exchange concerned and such notice shall be served on that Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned by registered post in the following manner:— (a) where notice is given to the workman, notice of retrenchment shall be sent within three days from the date on which notice is given to the workman; (b) where no notice is given to the workman and he is paid one month's wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and (c) where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Central Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned, at least one month before such date: Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to the Central Government, the Regional Labour Commissioner (Central), the Assistant Commissioner (Central), and the Employment Exchange concerned, within 3 days of the agreement.

77. Maintenance of seniority list of workmen.—The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

From the aforesaid discussion, following facts are held proved:-

A. There was a vacancy with the management at the time when the workman was given appointment.

B. The workman had requisite qualification for the post.

C. The case of the Management that the workman was outsourced employee could not be proved.

D. The case of the workman that he was appointed following recruitment procedure prevalent at the time stands proved. He worked under the direct control, supervision and direction of Management, in the Office of management and his wages were paid to him by Management only and not through any contractor.

E. The workman has successfully proved his continuous employment of more than 240 days in every year inspite of break of one day after every 59 days with the Management.

F. Mandatory Rules of prior notice and compensation as well preparation of seniority list of daily wagger/muster roll employee were not prepared and principle of first come and last has not been followed.

IN the light of the above findings, Issue No.2 & 3 are answered accordingly.

16. ISSUE NO.4:-

From the aforesaid discussion, the fact that there a vacancy for the post on which the applicant workman is working and that the applicant workman as requisite qualification of the post as well as that he has been recruited following the procedure established as mentioned above. Learned Counsel for the workman has referred to an Industrial Employment Standing Orders Act, 1946, Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 which deals with the classification of the workman referred to by learned counsel for the workman Union is being reproduced as follows:-

THE INDUSTRIAL EMPLOYMENT (Standing Orders) Act, 1946

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. And the Central Government is the appropriate Government in respect of establishments under the control of Central Government or a Railway Administration or in a major port, mine or oil field. Under the Industrial Employment (Standing Orders) Act, 1946, all RLCs(C) have been declared Certifying Officers to certify the standing orders in respect of the establishments falling in the Central Sphere. CLC(C) and all Dy.CLCs(C) have been declared Appellate Authorities under the Act.

17. In the case of M.P.State Road Transport Corporation Vs. Heeralal and Chhedalal & Others (Manu/MP 0138/1974) decided by the 5 Judges Bench of Hon'ble High Court of M.P., it has been held that in case of any discrepancy in the Standing Orders and Rules made by the Industrial Establishment, the former shall prevail. Hon'ble High Court has referred to another decision of Hon'ble Supreme Court in U.P.State Electricity Board Vs. Hari Shankar Jain & another (1997) SC 65 which has laid down the same prepositions, hence so far as the case of the applicant workman is concerned his rights will be governed by the standard Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 mentioned as above. This is also established on record documentary/statement of applicant workman for he has been discharging duties similarly to that done by the regular staff.

18. Reference of Section 25(T) and Scheduled V of the Unfair Labour Practice of the Industrial Disputes Act, 1947 which deal with prohibition of unfair labour practice requires to be mentioned here which are being reproduced as follows:-

[CHAPTER VC

UNFAIR LABOUR PRACTICES

25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

Schedule V of Industrial Disputes Act, 1947 deals with unfair labour practices adopted by employer, is being reproduced as follows:-

FIFTH SCHEDULE : Unfair Labour Practices

[Section 2(ra)]

I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS

(1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say.-

(a) threatening workmen with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organized;

(c) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.

(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,

(a) an employer taking an active interest in organizing a trade union of his workmen; and

(b) an employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.

(3) To establish employer sponsored trade unions of workmen.

(4) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say,

(a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

(c) changing seniority rating or workmen because of trade union activities;

(d) refusing to promote workmen of higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

(5) To discharge or dismiss workmen-

(a) by way of victimization;

(b) not in good faith, but in the colorable exercise of the employer's rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

(6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

(7) To transfer a workman mala fide from one place to another, under the guise of following management policy.

- (8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.
- (9) To show favoritism or partiality to one set of workers regardless of merit.
- (10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
- (11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
- (12) To recruit workman during a strike which is not an illegal strike.
- (13) Failure to implement award, settlement or agreement.
- (14) To indulge in acts of force or violence.
- (15) To refuse to bargain collectively, in good faith with the recognized trade unions.
- (16) Proposing or continuing a lock-out deemed to be illegal under this Act.

19. It is now established that giving artificial break of one or two days at certain time establishes the fact that the management of University has adopted an unfair labour practice keeping in view the fact that the same work continued after break and the same persons were engaged for that break even after breaks. Reference of case law **Secretary State of Karnataka and Uma Devi & Others 2006 AIR SCW 1991** has been taken by Management in its written statement of defence but since in the case in hand it has been proved that the applicant workman was not appointed through a back door entry rather he entered in the service after undergoing the recruitment procedure prevalent at that time, hence, the law laid down in that case does not apply to the case in hand. Judgement of Hon'ble the Apex Court in the case of **State of U.P. Vs. Pooran Chand Pandey Appeal (civil) 3765 of 2000** and **Harinandan Prasad Vs. Food Corporation of India & Ors. Appeal (civil) 3765 of 2000** require to be mentioned in this respect. Accordingly, the termination of applicant workman is held against law. **Issue No.4 is answered accordingly.**

20. **ISSUE NO.5:-**

Learned Counsel for workman has referred to decision of Hon'ble the Apex Court in the case of **Jeetu Bha Khan Sanghvi Jadega Vs. Kuch District panchayat, Civil Appeal No.6890/2022/SLP Civil No.8393/2022.**

Hence, in the light of the above, discussion and finding, the claim of the applicant workman is held proved and he is held entitled to reinstatement without back wages from the date of his retrenchment till the date of award and is also held entitled for permanent classification in Class-III for the post of Data Entry Operator/ Assistant Gr-III with Grade Pay admissible to him from the completion of six months from the date of his initial appointment and is also held entitled to be treated in continuous service of Management for all service benefits except back wages. **Issue No.5 is answered accordingly.**

21. On the basis of the above discussion, following award is passed:-

- A The action of Management in terminating the services of Shri Rajendra Singh Thakur Data Entry Operator/Assistant Grade III, after his appointment with the Management on June-17-2013 and after continuing him as permanent employee as data entry operator/Assistant Gr-III and also not classifying his services as data entry operator/Assistant Gr-III, is held to be unjustified in law and fact.
- B. The workman is held entitled to reinstatement without back wages from the date of his retrenchment till the date of award and is also held entitled for permanent classification in Class-III for the post of Data Entry Operator/ Assistant Gr-III with Grade Pay admissible to him from the completion of six months from the date of his initial appointment and is also held entitled to be treated in continuous service of Management for all service benefits except back wages.

22. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 19/10/2022

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1365.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुलसचिव, डॉ. हरि सिंह गौर विश्वविद्यालय, सागर, (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, डॉ. हरि सिंह गौर (मध्य.), विश्वविद्यालय कर्मचारी संघ, सागर, (म.प्र.), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. CGIT/LC/R/75/2018) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/11/2022 को प्राप्त हुआ था।

[सं. एल-42011/91/2018- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1365.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/75/2018) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Dr. Hari Singh Gaur University, Sagar, (M.P.) and The President, Dr. Hari Singh Gour(Cent.), University Employ Union, Sagar, (M.P.), which was received along with soft copy of the award by the Central Government on 26/11/2022.

[No. L-42011/91/2018 - IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/75/2018****Present:** P.K.SRIVASTAVA H.J.S.(Retd.)

Shri Sandeep Balmiki
President
Dr. Hari Singh Gour(Cent.)
University Employ Union
Resident of Purvayau Touri,,
Sagar, M.P. – 470001

....Workman

Versus

The Registrar
Dr. Hari Singh Gaur University
Sagar, M.P. – 470003

....Management

AWARD**(Passed on this 20th day of October-2022)**

As per letter dated 13/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42011/91/2018-IR(DU). The dispute under reference relates to:

“क्या प्रबंधन रजिस्ट्रार डॉ. हरीसिंह गौर विश्वविद्यालय (केन्द्रीय विद्यालय) सागर म०प्र० के द्वारा श्री. अमित नहारिया दैनिक वेतन भोगी प्यून / सहायक ग्रेड-4 को दिनांक 27.9.2010 से नियोजन में रखने पश्चात स्थाई कर्मचारी के तौर पर प्यून/ सहायक ग्रेड-4 के पद पर वर्गीकरण न करते हुए उनके वास्तविक पद का वेतनमान प्रदान न करना एवं दिनांक 25.10.2017 से

उनकी सेवाएं समाप्त किये जाने की कार्यवाही न्यायोचित है ? यदि नहीं, तो संबंधित कर्मचारी किस अनुतोष का हकदार है ?”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

2. The case of the workman Union, as put up in their statement of claim, is that is an Association of persons working for the protection of the interest of employees working for the University. It has authority to raise a dispute and contest the case on behalf of the workman who has is a member of the Union. The workman was initially appointed Peon/Assistant Grade-IV on Daily Wage/muster roll in Department of Computer Science, since his initial appointment in the year 2010 . He approached the Hon'ble High Court of M.P., when there was reduction of pay by way of a writ petition. Hon'ble High court directed the University to give benefit of minimum pay scale notified to the post . The University was declared a Central University vide Central University Act 2009. Before that, it was a State University as per provisions of M.P. Vishwavidyalaya Adhiniyam 1973. The workman was initially appointed as a Daily wage Peon/Assistant Grade-IV on 27-9-2010 and started discharging his duties as daily wage peon. The said appointment was with the prior approval after creation of the post. The said workman has been continuously working since the date of his first appointment on 27-9-2010 till 25-10-2017 when his services were terminated without preparation of any seniority list, without following the principles of last come first go and also without any notice or compensation. According to the applicant workman, the said post are still available with the second party University and is of permanent nature. Further, since the applicant workman possessed the necessary qualification for the post of daily wage peon/Assistant Grade-IV, he is therefore, entitled for classification on the aforesaid post with grade pay of 1900/- per month with effect from 27-9-2010. He is also further entitled to be reinstated with full back wages and benefits setting aside his retrenchment as inspite of his best efforts he could not get suitable job for him till now.

3. According to the workman Union, the duties which were discharged by the applicant workman is of Class-IV post in the University. When the University was a State University a resolution was passed by the Executive Council of the University in its meeting dated 1-5-2008 by exercising powers under Section 24 of the M.P. Vishwavidyalaya Adhiniyam, 1973. It was resolved that all the daily wagers/muster roll employees, employed will be entitled to minimum of pay and scale and allowances which is applicable to the Grades in which they were discharging their duties. The Executive council further adopted the recommendation of other pay recommendations of Teachers/Officers and employees vide its resolution dated 22-8-2009. The University was declared a Central University with the passage of notification of Central Universities Act, 2009. Section 4D of this Act provided that every person earlier employed by the University shall hold his office on same remuneration and terms and conditions and rules and privileges unless it is altered in consequence with the statutory rights. It is further the case of the workman Union that the university has not recruited employees on regular basis in Class-III and Class-IV for the last several years and this work is being discharged by muster roll employees even today also. Hence, the action of the University denying standard classification pay scale of Grade-IV to employees and making payment to all at the same rate of pay irrespective of work discharged by them is illegal and arbitrary. It is in this back drop that Hon'ble High Court of M.P. directed the University to pay the applicant workman and similarly situated petitioners minimum pay in the scale of pay notified for the post against which they are discharging their duties vide its order dated 26-9-2011 passed in W.P.No.4520/2010. This order has been affirmed by Hon'ble the High Court vide its order dated 26-7-2013 passed in S.L.P.No.18342-43/2013. Further, it has been stated that in order to circumvent the order of Hon'ble High Court and Hon. Supreme Court, the University has not carried proper classification and fitment . Since the applicant workman has not been given proper classification and fitment and deprived them of all the benefits which is violation of standing order applicable over the University. Accordingly, it has been prayed that holding the termination of the workman against law, he be held entitled to be reinstated with all back wages and benefits and also be held entitled for permanent classification in Grade-IV for the post of daily wage peon/Assistant Grade-IV with Grade Pay per month w.e.f. completion of six months from the date of completion of six months of his application or since 27-9-2010 with arrears and interest.

4. IN the written statement of defence by the University, it has been pleaded that the allegation of the workman that he is discharging his duties on vacant and sanctioned post is incorrect. To obtain the status of a permanent employee a person must be employed in terms of statutory rules. The applicant workman was simply a daily wage/temporary employee on outsourcing basis through a contractor, who cannot hold the post unless he is appointment in terms of the Act and rules framed there under. An appointment may in violation of mandatory provisions of a statute is nullity. A persons appointed in such a manner cannot claim any benefit and rights regarding regularization and permanency in service in the light of Principle laid down in the case of **State of Karnataka & Another Vs. Uma Devi and Others** (2006) 4 SCC 1. As regards the order of Hon'ble High Court and Hon'ble the Apex Court directing minimum pay in the scale , it is the case of the Management that the this order has been complied with by the management of University. The Competent Authority in the

University has constituted a Committee to examine the case of daily wagers/muster roll employees discharging the duties of Class-III and on the basis of the records available the daily wage and muster roll employees have been given pay entitled to Class-III employees and Dearness Allowance. Accordingly the management has requested that the reference be answered against the workman Union. It is further the case of the management that the applicant workman was disengaged following the rules. The Management has thus prayed that the reference be answered against the applicant workman.

5. The workman Union has filed a rejoinder wherein it has denied the case of management and has further reiterated its case.

6. The workman has filed vide list 18 documents and has proved as Exhibit W-1 to W-18, which are RTI and educational documents to be referred to as and when required. The workman Union has further filed and proved photocopy of marksheets and educational qualification documents of the workman Amit Nahariya which are collectively marked Exhibit W-15 to be referred to as and when required.

7. The workman Union has filed affidavit as his examination in chief. Opportunity of cross-examination of this witness was given to management. They did not avail this opportunity, hence opportunity of cross-examination of this witness is closed.

8. The management has not examined any witness, rather it has filed two photocopy office orders dated 5-5-2014 and 2-11-2016 both admitted by workman Union, marked as Exhibit M1 to M2 respectively.

9. I have heard arguments of Mr. Uttam Maheshwari, learned counsel for the workman Union. The management did not appear at the time of arguments. The workman Union has filed written arguments also which is part of the record. No written arguments has been filed by the Management. I have gone through the record as well.

10. On perusal of record in the light of arguments, the following points/issues come up for determination:-

- 1) **Whether the University Dr. Hari Singh Gaur University is an industry as defined under Section 2(J) and the applicant workman is a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947?**
2. **Whether the applicant workman was recruited as a daily wage peon/Assistant Grade Class-IV against sanctioned vacancy, following recruitment procedure and also whether he had the requisite qualification for the job he was recruited?**
3. **Whether the applicant workman was initially recruited through contractor as a contractor worker on outsourcing?**
4. **Whether the workman has been in continuous service of the management from the date of his first appointment till date and whether his termination is against law?**
5. **Whether the applicant workman is entitled to be classified as Category-III/Class-III employee for the post of Daily Wage Peon/Assistant Grade-IV, if yes from which date?**

11. ISSUE NO.1:-

Before proceeding it is necessary to enumerate Section 2(J) and Section 2(S) of the Industrial Disputes Act, 1947 as below:-

Section 2(S)-

“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 prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred 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.]

2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

12. In the case of **Rajkumar Vs. Director Education Civil appeal No.1020/2011** Hon’ble the Apex Court has held that educational institution is industry as defined under Section 2(J) of the Act. As regards the University, Hon’ble the Apex court has referred to the Judgment of Seven Judges Bench in the case of **Bangalore Water Supply & Sewerage Board Vs. R.Rajappa and Others , (1978) Scr (3) 207**, the relevant portion is being reproduced as follows:-

“The issue whether educational institution is an ‘industry’, and its employees are ‘workmen’ for 4 (1997) 5 SCC 737 ,the purpose of the ID Act has been answered by a Seven-judge Bench of this Court way back in the year 1978 in the case of Bangalore Water Supply (supra). It was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen. It was held as under: “The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not ‘workmen’ and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University’s multi-form operations.” (emphasis laid by this Court)

13. Hence, in the light of aforesaid judgment, the Dr.Hari Singh Gaur University non teaching staff is held to be workmen as defined under Section 2(S) and 2(J) and for this purpose, the University is held to be an Industry as defined under Section 2(J) of the Industrial Disputes Act,1947. **Issue No.1 is answered accordingly.**

14. **ISSUE NO.2 & 3:-**

Since these issues are inter related, they are being taken together.

According to the workman Union, the applicant workman was initially appointed on 27-9-2010 on the post of Peon/Assistant Grade-IV on casual/ muster roll which was a duly sanctioned and vacant post. He had the requisite qualification for the post he was a Matriculate. It is in the evidence of the workman that University had a duly constituted Selection committee headed by then Vice Chancellor, the Registrar and other Professors were the Members of the Committee who after initial scrutiny, of his application and documents filed by him in response to vacancy notification interviewed him personally and thereafter his name figured in the list of selected candidates. The workman witness further stated that the case of the management that the workman was an outsourced employee is against fact. He further states in his evidence that inspite of artificial breaks of one day after every 59 days he had completed 240 days in every year including the year preceding the date of his termination. He also states that the Management did not prepare any seniority list and did not follow the principle of first come and last go, also did not pay any compensation or notice. He also states that when he had raised a dispute with the Assistant Labour Commissioner, the Management illegally terminated his services in violation of section 33 of Industrial Disputes Act,1947. This statement of workman which is on oath is uncross-examined. Exhibit W-18 is copy of his educational qualifications. The case of Management is mainly that the workman was never engaged by the University. He was an outsourced employee. The Management does not

disclose the name of the contractor through which the workman was outsourced in its pleadings nor has lead any evidence oral or documentary as to who was the contractor through which the services of the workman was outsourced.

Secondly, the RTI documents mentioned above show that the payment to the workman was done by the University itself and not through any contractor. Also that the provident fund of this workman was also deposited by the Management itself, the RTI documents regarding the attendance of the workman corroborate his case that he has worked continuously for 240 days in every year including the year preceding the date of his termination.

As pleaded by Workman Union, the management neither prepared any seniority list nor has followed the principle of first come last go also that no notice or compensation was given to the workman on his retrenchment. The workman witness has corroborated this allegation in his affidavit as his Examination in Chief. Management has not filed any document or evidence in rebuttal, hence, this allegation of the workman Union also stands proved.

Section 25B, 25F, Section 25G and Section 25H of the Industrial Disputes Act, 1947 and Rules 76 and 77 of Industrial Disputes Central Rules, 1957 are being reproduced as follows:-

Section 25 B:-

Definition of continuous service.-

(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 authorised 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 of 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) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. 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: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[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 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

76. Notice of retrenchment.—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service The

Industrial Disputes (Central) Rules, 1957 for not less than one year under him (hereinafter referred to as ‘workman’ in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Central Government, the Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) and the Employment Exchange concerned and such notice shall be served on that Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned by registered post in the following manner:— (a) where notice is given to the workman, notice of retrenchment shall be sent within three days from the date on which notice is given to the workman; (b) where no notice is given to the workman and he is paid one month’s wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and (c) where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Central Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned, at least one month before such date: Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to the Central Government, the Regional Labour Commissioner (Central), the Assistant Commissioner (Central), and the Employment Exchange concerned, within 3 days of the agreement.

77. Maintenance of seniority list of workmen.—The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be posted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

From the aforesaid discussion, following facts are held proved:-

A. There was a vacancy with the management at the time when the workman was given appointment.

B. The workman had requisite qualification for the post.

C. The case of the Management that the workman was outsourced employee could not be proved.

D. The case of the workman that he was appointed following recruitment procedure prevalent at the time stands proved. He worked under the direct control, supervision and direction of Management, in the Office of management and his wages were paid to him by Management only and not through any contractor.

E. The workman has successfully proved his continuous employment of more than 240 days in every year inspite of break of one day after every 59 days with the Management.

F. Mandatory Rules of prior notice and compensation as well preparation of seniority list of daily wagger/muster roll employee were not prepared and principle of first come and last has not been followed.

IN the light of the above findings, Issue No.2 & 3 are answered accordingly.

15. ISSUE NO.4:-

From the aforesaid discussion, the fact that there a vacancy for the post on which the applicant workman is working and that the applicant workman as requisite qualification of the post as well as that he has been recruited following the procedure established as mentioned above. Learned Counsel for the workman has referred to an Industrial Employment Standing Orders Act, 1946, Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 which deals with the classification of the workman referred to by learned counsel for the workman Union is being reproduced as follows:-

THE INDUSTRIAL EMPLOYMENT (Standing Orders) Act, 1946

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. And the Central

Government is the appropriate Government in respect of establishments under the control of Central Government or a Railway Administration or in a major port, mine or oil field. Under the Industrial Employment (Standing Orders) Act, 1946, all RLCs(C) have been declared Certifying Officers to certify the standing orders in respect of the establishments falling in the Central Sphere. CLC(C) and all Dy.CLCs(C) have been declared Appellate Authorities under the Act.

16. In the case of M.P.State Road Transport Corporation Vs. Heeralal and Chhedalal & Others (Manu/MP 0138/1974) decided by the 5 Judges Bench of Hon'ble High Court of M.P., it has been held that in case of any discrepancy in the Standing Orders and Rules made by the Industrial Establishment, the former shall prevail. Hon'ble High Court has referred to another decision of Hon'ble Supreme Court in U.P.State Electricity Board Vs. Hari Shankar Jain & another (1997) SC 65 which has laid down the same propositions, hence so far as the case of the applicant workman is concerned his rights will be governed by the standard Clause 2(b) of Industrial Employment (Standing Orders) Central Act 1946 mentioned as above. This is also established on record documentary/statement of applicant workman for he has been discharging duties similarly to that done by the regular staff.

17. Reference of Section 25(T) and Scheduled V of the Unfair Labour Practice of the Industrial Disputes Act, 1947 which deal with prohibition of unfair labour practice requires to be mentioned here which are being reproduced as follows:-

[CHAPTER VC

UNFAIR LABOUR PRACTICES

25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

Schedule V of Industrial Disputes Act, 1947 deals with unfair labour practices adopted by employer, is being reproduced as follows:-

FIFTH SCHEDULE : Unfair Labour Practices

[Section 2(ra)]

I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS

(1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say,-

(a) threatening workmen with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organized;

(c) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.

(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,

(a) an employer taking an active interest in organizing a trade union of his workmen; and

(b) an employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.

(3) To establish employer sponsored trade unions of workmen.

(4) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say,

(a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

(c) changing seniority rating of workmen because of trade union activities;

- (d) refusing to promote workmen of higher posts on account of their trade union activities;
- (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;
- (f) discharging office-bearers or active members of the trade union on account of their trade union activities.
- (5) To discharge or dismiss workmen-
 - (a) by way of victimization;
 - (b) not in good faith, but in the colorable exercise of the employer's rights;
 - (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
 - (d) for patently false reasons;
 - (e) on untrue or trumped up allegations of absence without leave;
 - (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
 - (g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.
- (6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
- (7) To transfer a workman mala fide from one place to another, under the guise of following management policy.
- (8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.
- (9) To show favoritism or partiality to one set of workers regardless of merit.
- (10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
- (11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
- (12) To recruit workman during a strike which is not an illegal strike.
- (13) Failure to implement award, settlement or agreement.
- (14) To indulge in acts of force or violence.
- (15) To refuse to bargain collectively, in good faith with the recognized trade unions.
- (16) Proposing or continuing a lock-out deemed to be illegal under this Act.

18. It is now established that giving artificial break of one or two days at certain time establishes the fact that the management of University has adopted an unfair labour practice keeping in view the fact that the same work continued after break and the same persons were engaged for that break even after breaks. Reference of case law **Secretary State of Karnataka and Uma Devi & Others 2006 AIR SCW 1991** has been taken by Management in its written statement of defence but since in the case in hand it has been proved that the applicant workman was not appointed through a back door entry rather he entered in the service after undergoing the recruitment procedure prevalent at that time, hence, the law laid down in that case does not apply to the case in hand. Judgement of Hon'ble the Apex Court in the case of **State of U.P. Vs. Pooran Chand Pandey Appeal (civil) 3765 of 2000** and **Harinandan Prasad Vs. Food Corporation of India & Ors. Appeal (civil) 3765 of 2000** require to be mentioned in this respect. Accordingly, the termination of applicant workman is held against law. **Issue No.4 is answered accordingly.**

19. ISSUE NO.5:-

Learned Counsel for workman has referred to decision of Hon'ble the Apex Court in the case of **Jeetu Bha Khan Sanghvi Jadega Vs. Kuch District panchayat, Civil Appeal No.6890/2022/SLP Civil No. 8393/2022.**

Hence, in the light of the above, discussion and finding, the claim of the applicant workman is held proved and he is held entitled to reinstatement without back wages from the date of his retrenchment till the date of award and is also held entitled for permanent classification in Class-IV for the post of Peon/ Assistant Gr-IV with Grade Pay admissible to him from the completion of six months from the date of his initial appointment and is also held entitled to be treated in continuous service of Management for all service benefits except back wages.

Issue No.5 is answered accordingly.

19. On the basis of the above discussion, following award is passed:-

- A The action of Management in terminating the services of Shri Amit Nahariya Daily Wage Peon/Assistant Gr-IV, after his appointment with the Management on 27-9-2010 in Department of Computer Science also not classifying his services as Peon/Assistant Gr-IV, is held to unjustified in law and fact.**
- B. The workman is held entitled to reinstatement without back wages from the date of his retrenchment till the date of award and is also held entitled for permanent classification in Class-IV for the post of Peon/ Assistant Gr-IV with Grade Pay admissible to him from the completion of six months from the date of his initial appointment and is also held entitled to be treated in continuous service of Management for all service benefits except back wages.**

21. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 19/10/2022

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1366.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंधक, रिलायंस नेक्स्ट लिंक प्राइवेट लिमिटेड, इंदौर; मैनेजर, अल्काटेल ल्यूसेंट मैनेज्ड सॉल्यूशन (इंडिया) प्राइवेट लिमिटेड, सी/ओ रिलायंस इंफोकॉम इंफ्रास्ट्रक्चर लिमिटेड, मुंबई; रिलायंस कम्युनिकेशन प्राइवेट लिमिटेड, सतना (एमपी) के प्रबंधन के संबद्ध नियोजकों और श्री शिव बघेल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. CGIT/LC/R/07/2016) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17/11/2022 को प्राप्त हुआ था।

[सं. एल-40012/32/2015- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1366.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/07/2016) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manager, Reliance Next Link Pvt.Ltd., Indore ;The Manager, Alkatel Lucent Managed Solution (India) Pvt.Ltd.,C/o Reliance Inforcom Infrastructure Ltd., Mumbai ; Reliance Communication Private Ltd., Satna (MP) and Shri Shiv Baghel, Worker which was received along with soft copy of the award by the Central Government on 17/11/2022.

[No. L- 40012/32/2015- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/7/2016

Present: P.K. SRIVASTAVA H.J.S..(Retd)

Shri Shiv Baghel
S/o Shri Girdhar Singh Baghel
H.No.212, Ward No.1, Amarpatan Post & Tehsil

Amarpatam District, Satna-485775.

....Workman

Versus

1. The Manager

Reliance Next Link Pvt.Ltd.

BCM Heights Plot No.A-5

Scheme 54 PU-4, Commercial-2

Vijai Nagar, Near Bombay Hospital

Indore-452010

2. The Manager Alkatel Lucent Managed Solution(India)Pvt.Ltd.

C/o Reliance Inforcom Infrastructure Ltd.

A-8 Buildings, 3rd Floor B-Wing,

Newar MBP, Behind DAKC

Mahape MIDC, Navi Mumbai 400710

3. Reliance Communication Private Ltd.,

Mahihar Road, Nazirabad, Satna(MP)-485001

...Management

AWARD**(Passed on 17-10-2022.)**

As per letter dated 22-12-2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/32/2015-IR(DU). The dispute under reference relates to:

“Whether the action of the management in terminating the service of Shri ShivBAGhelw.e.f. 4-12-2014 and retrenchment compensation given to him is justifiable/legal?if not to what relief the workman is entitled to and from which date.”

1. After registering the case on the basis of reference, notices were sent to the parties.

2. According to the workman he was initially appointed with the Management of Reliance Next Link/Reliance Communication on 15-10-2004 during his employment. Their employers entered into a contract with M/s Alkatel Lucent Managed Solution(India)Pvt.Ltd. for providing network services to the management. The services of 15 employees of the establishment of Reliance Communication were transferred to the Alkatel Lucent Managed Solution(India)Pvt.Ltd. The services of the workman were transferred according. M/s Alkatel Lucent Managed Solution(India)Pvt.Ltd who accepted the absorption of such workers including the workman. All of a sudden this contract of Alkatel Lucent Managed Solution(India)Pvt.Ltd was dissolved and M/s Alkatel Lucent Managed Solution(India)Pvt.Ltd terminated the services after paying recruitment compensation for one year, treating his services to be w.e.f 12-3-2013 i.e. date on which his services were terminated to M/s Alkatel Lucent Managed Solution(India)Pvt.Ltd from Reliance communication. This is also the case of the workman, that after termination of his services, the employers Alkatel Lucent Managed Solution(India)Pvt.Ltd have given appointment to other persons namely viz Mahendra Kumar, Rajendra Sajid Praadad pandey Pradeep Chaturvedi who were junior to the applicant workman. The action of the management is in violation of Section 25F, Section 25G, Section 25H and Section 25N of the Industrial Disputes Act, 1947. Accordingly, it has been prayed that setting aside his termination, the applicant workman be entitled for reinstatement with all back wages and benefits.

3. The case of the Management is mainly that while in service of Reliance Communication, the applicant workman submitted his resignation on March-2013 and joined with Alkatel Lucent Managed Solution(India)Pvt.Ltd. His resignation was accepted by Reliance Communication. After resignation there was no employer/employee relation between the workman and Management and the Reliance Company the third Management Alkatel Lucent Managed Solution(India)Pvt.Ltd has taken a case that he was retrenched after paying him compensation as the work was not available with them. He received the compensation without disputing it. He worked with them only from 1-4-2013 for one year.

4. During the course of hearing none appeared for Management, hence this case proceeded ex-parte against the management. The workman side has filed its affidavit as its examination in chief. He proved his interview letter while he was in reliance communication. He also filed and proved his appointment letter dated 12-12-2013 and recruitment notice.

5. I have heard ex-parte arguments of learned counsel for the workman Shri Aditya Ahiwasi and have perused the record.

6. **The Reference is the issue for determination in the case in hand.**

7. The appointment letter Exhibit W-4 issued by the management of Alkatel Lucent Managed Solution(India)Pvt.Ltd consequently states that it was a fresh appointment of the workman with the company. It no where submits that the services of the workman were transferred from Reliance Company to Alkatel Lucent Managed Solution(India)Pvt.Ltd. There is no other document filed or proved by the workman showing that the services of any workman of Reliance Company was transferred to Alkatel Lucent Managed Solution(India)Pvt.Ltd at any point of time as alleged by him. The applicant workman could not prove in his evidence that juniors to him were appointed by any documentary evidence, there is only his self serving statement which is not sufficient in this respect. In these circumstances, his recruitment after giving him recruitment compensation cannot be faulted in law. Hence the reference deserves to be answered against the workman and is answered accordingly.

8. The action of the Management of Alkatel Lucent Managed Solution(India)Pvt.Ltd in determining the services of Shri Shiv Baghel after paying retrenchment compensation is held to be legal and proper.

9. On the basis of the above discussion, following award is passed:-

A. The action of the management in terminating the service of Shri Shiv BAGhel w.e.f. 4-12-2014 and retrenchment compensation given to him is held to be just and legal.

B. The workman is held entitled to no relief.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 17-10-2022

नई दिल्ली, 15 दिसम्बर, 2022

का.आ. 1367.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक (ओ एंड एम) एनटीपीसी, बिलासपुर (सी.जी.); अपर प्रबंधक और मानव संसाधन (प्रमुख), मैसर्स एरा इंफ्रा इंजीनियरिंग लिमिटेड, नोएडा (यू.पी.); परियोजना प्रबंधक, एरा इंफ्रा इंजीनियरिंग लिमिटेड एनटीपीसी, बिलासपुर (सी.जी.) के प्रबंधन के संबद्ध नियोजकों और अध्यक्ष, छत्तीसगढ़ कर्मचारी मजदूर एकता संघ, बिलासपुर, छत्तीसगढ़, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. CGIT/LC/R/46/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26/11/2022 को प्राप्त हुआ था।

[सं. एल-42011/03/2017- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 15th December, 2022

S.O. 1367.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/46/2017) of the Central Government Industrial Tribunal-cum-Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager (O & M) NTPC, Bilaspur (C.G.); The Additional Manager & HR (Head), M/s Era Infra Engineering Ltd., Noida (U.P.); The Project Manager, Era Infra Engineering Ltd. NTPC, Bilaspur (C.G) and The President, Chhattisgarh Kramchari Mazdoor Ekta Union, Bilaspur, Chhattisgarh, which was received along with soft copy of the award by the Central Government on 26/11/2022.

[No. L- 42011/03/2017- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/46/2017

Present: P.K.SRIVASTAVA H.J.S.(Retd.)

Smt. Padmani Bai,
C/o Shri Om Prakash Gangotri,
President, Chhattisgarh Kramchari
Mazdoor Ekta Union, Bilaspur,
Chhattisgarh - 495555

...Workman

Versus

The General Manager (O & M)
NTPC, Seepat PO Ujjawal Nagar,
Bilaspur. C.G. - 495555

The Addl. Manager & HR (Head)
M/s Era Infra Engineering Ltd.
C-56/41, Sector – 62,
Noida UP – 201301.

The Project Manager,
Era Infra Engineering Ltd. NTPC,
Seepat Site, P.O. Ujjawal Nagar
Bilaspur. C.G. – 495555

...Management

AWARD

(Passed on this 17th day of October-2022)

1. As per letter dated 09/05/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42011/03/2017 – IR (DU). The dispute under reference relates to:

“Whether the action on the part of M/s Era Infra Engineering Ltd, a contractor working under the principal employer at NTPC, Seepat site in terminating the workman namely Smt. Padmani Bai w/o Shri Chatur Lal and not paying the terminal benefits as espoused by the president of the Chattisgarh Kramchari Mazdoor Ekta Union, Bilaspur is legal and justified as per the provisions of section 25 (F) of ID act? If not, what relief the above named workman is entitled to? ”

2. After registering the case on the basis of reference, notices were sent to the parties on addresses' mention in the reference. Workman represented through her learned counsel Adv. Shri S.K.Saini. Management No. 1 & 2 represented through their learned counsel Adv. Shri R.C.Shrivastava and Adv. Shri Pradeep Kumar Pandey respectively. Many dates were given for filling of Statement of Claim. No Statement of Claim was filed. The opposite parties also did not file any Written Statement of Defence.

3. Since the initial burden to prove its case is on the workman side in which she has failed. Hence the reference deserves to be answered against her and is answered accordingly.

4. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 17-10-2022

नई दिल्ली, 16 दिसम्बर, 2022

का.आ. 1368.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 51/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.11.2022 को प्राप्त हुआ था।

[सं. एल-22012/379/2003- आई.आर.(सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 16th December, 2022

S.O. 1368.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the Management of E.C.L. and their workmen, received by the Central Government on 09/11/2022.

[No. L-22012/379/2003 -IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

Present: Shri ANANDA KUMAR MUKHERJEE, Presiding Officer
C.G.I.T-cum-L.C., Asansol

REFERENCE CASE No. 51 of 2004

Parties: Management of Patmohna Colliery of M/s. ECL

Vs.

Dilip Muchi

Representatives:

For the Management: Mr. P. K. Goswami, Learned Advocate.

For the Union/Workmen: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

Industry: Coal. **State:** West Bengal. **Dated:** 21.10.2022

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Govt. of India through the Ministry of Labour, vide its Order No. **L-22012/379/2003-IR(CM-II)** dated 04.10.2004 has been pleased to refer the following dispute between the employers that is the Management of Patmohna Colliery of M/s. Eastern Coalfields Limited and the workman Dilip Mochi for adjudication by this Tribunal.

SCHEDULE

“ Whether the action of the management of Patmohna Colliery of M/s. ECL in dismissing Sri Dilip Mochi ignoring his treatment papers and prayer is legal and justified? If not, to what relief he is entitled? ”

1. After receiving Order No. **L-22012/379/2003-IR(CM-II)** dated 04.10.2004 of the aforementioned Reference framed by the Government of India, Ministry of Labour, New Delhi for adjudication, a **Reference case No. 51 of 2004** was registered on 14.10.2004. Notices were issued to the Management of Eastern Coalfields Limited as well as the Secretary, Koyala Mazdoor Congress, Union, representing the workman, directing them to file their statements of claim along with relevant documents and list of witnesses in support of their respective claims.

2. The Management and union representing the workman filed written statements on 10.06.2005. In the written statement of the workman it has been averred that Dilip Muchi was a permanent employee of the company posted as U.G. Loader at Patmohna Colliery of M/s. ECL having UM No. 142177. His date of birth is 30.08.1969 and date of appointment is 27.07.1992. It is disclosed that Dilip Muchi absented from his duty under Eastern Coalfields Limited from 29.12.1995 to 10.05.1996 i.e. for a period of four months and eleven days only due to his illness. He informed the Management of ECL about his illness but in spite of such illness the Management dismissed him from service. According to the workman he was Charge Sheeted on 10.05.1996 for

his absence from his duty and he sent his reply to the company but Management did not allow him to join his duty and held a Departmental Enquiry in which he participated and informed the reasons why he was unable to attend his duty. Documents related to his medical treatment were also produced but his explanation was not considered and he was finally dismissed from service w.e.f. 26.07.1996.

3. According to the workman the punishment of dismissal from service is very harsh and an extreme punishment which should not be awarded against the workman for his absence from duty for a period of four months and eleven days due to illness. It is contended that the punishment imposed is therefore disproportionate to the nature of default. The workman further contended that he belongs to weaker section of the society being a member of Schedule Cast and is unaware about rules and regulations of the company from which the Management should have taken a lenient view and allowed him to join his duty. Further case of the workman is that he is an illiterate person having no source of income as such his family members are spending their days in starving condition. It is urged that the Eastern Coalfields Limited considered a number of cases where workmen who absented from duty for more than one year were reinstated in service but in his case, the employee was dismissed for his absence for a shorter period. The workman has challenged the findings of the Enquiry Officer and prayed for his reinstatement in service and the payment of back wages with all consequential benefits.

4. The Management of M/s. ECL in their written statement, submitted by Agent of B.M.P. Group, Sodepur Area, M/s. ECL has admitted that the petitioner Dilip Muchi was a permanent employee of Patmohna Colliery of M/s. ECL. It is their case that the workman was Charge Sheeted under Ref. No. PM/C-6/58/748 dated 10.05.1996 for his unauthorized absence from duty. The workman replied to the charge and claimed to have been sick during that period. A Departmental Enquiry was held and the Enquiry Officer found the workman guilty of misconduct. The competent authority after perusing the Enquiry Report found nothing to show any leniency and dismissed Dilip Muchi in accordance with the provisions of the Standing Order.

5. Instant dispute was agitated by the union on 10.03.2003 after passage of seven years without showing any reason for delay. The Management contended that the grounds for absence disclosed by the workman was not found reliable. Furthermore, the union has no locus standi to represent the workman as the concerned workman was not a member of union. According to the Management the dismissal of Dilip Muchi from service is justified and legal. Accordingly, the workman is not entitled to any relief.

6. In the instant case Dilip Muchi filed his affidavit-in-chief and was cross-examined at length on behalf of the Management. The letter of dismissal being Ref. No. PMC/C-6/92/1312 dated 26.07.1996 issued by Manager, Patmohna Colliery of M/s. ECL has been admitted in evidence as Exhibit WE-I. The letter of Deputy Chief Personnel Manager dated 18/19.07.1996 relating to dismissal of Dilip Muchi with immediate effect is marked as Exhibit WE-II. The report of the Enquiry Officer dated 29.06.1996 has been marked as Exhibit WE-III. The representation of the workman regarding his illness, that he was suffering for Tuberculosis (T.B.) has been marked as Exhibit WE-IV. The Notice of enquiry dated 07.06.1996 issued to the workman has been marked as Exhibit WE-V. Charge Sheet issued to the workman dated 10.05.1996 and the explanation submitted by the workman for his absence from duty has been marked as Exhibit WE-VI. Copies of medical prescriptions dated 29.12.1995, 15.03.1996, and 15.05.1996 have been produced before this Tribunal but the same has not been marked as Exhibits as the author of such documents has not been examined to establish their veracity.

7. The concerned workman in his affidavit has stated that copy of Enquiry Officer's report and second Show cause notice were not issued to him before his dismissal and he was not provided with the opportunity to respond. The witness further stated that he used to reside at Jamuria but his place of work at Patmohna Colliery was far away from his place of residence as such during his illness he could not reach the colliery. The workman / petitioner stated that the Management of Eastern Coalfields Limited considered a number of cases of dismissal on the charges of absenteeism and on the basis of the Memorandum of Settlement signed by the Management of Eastern Coalfields Limited and their workmen represented by unions on 22.05.2007 the employees below forty-five years of age and who were dismissed for being absent for a period of nine months were reinstated. It is the case of the workman that he did not have any ill intention to remain absent from his duty. Accordingly, he may be allowed to join and his full wages may be released. In course of cross-examination the witness deposed that he was medically treated by Dr. Kajal Chatterjee, a private practitioner at A. B. Pit Colliery. He also admitted that there is a doctor of Eastern Coalfields Limited in Patmohna Colliery but he did not go to him for his medical treatment. Furthermore, Akhalpur P.H.C. is nearest to Jamuria village, but he did not even go there for his treatment. A suggestion was given to the witness that the Medical Certificates produced by him have been purchased, but the witness denied the same. During evidence the workman did not examine Dr. Kajal Chatterjee to prove that he was actually suffering from Tuberculosis. The witness has not produced any confirmatory Test Report to establish that he was suffering from Tuberculosis at the relevant time.

8. Mr. P. K. Goswami, learned advocate for the Management argued that the workman was dismissed due to his unauthorized absence for a period of four months and eleven days. After service of notice for enquiry

(Exhibit WE-V) dated 07.06.1991 the workman participated in the enquiry but failed to adduce convincing evidence to establish that he was suffering from Tuberculosis during such period of absence. Opportunity was given to the workman to be represented and assisted by any other co-worker during the enquiry but he did not avail the same. Though he was absent from 29.12.1995 the name of the workman did not appear in the sick list of the colliery, which implied that he did not inform about his illness to the company. During the Departmental Enquiry Mr. Mangalmoy Sarkar, Leave Clerk and Mr. V. K. Batabyal were examined for the Eastern Coalfields Limited Management. Dilip Muchi also examined himself as a defence witness. He admitted about his absence from duty from 04.10.1995 to 10.05.1996 which is more than four months and eleven 11 days as claimed by the workman. He stated that he was under the medical treatment of Dr. Kajal Chatterjee, a private practitioner who was treating him for Tuberculosis. As there was no adult male member in his family intimation could not be given to his office. In course of cross-examination, he deposed that he did not like to engage his co-worker to assist him at the time of enquiry nor did he want to cross-examination the Management Witness. Learned advocate for Management argued that the workman has admitted his unauthorized absence and could not produce any convincing documents to establish his case of illness. Accordingly, Manager of Patmohna Colliery of M/s. ECL on the basis of the report of the Departmental Enquiry has rightly dismissed the workman from service w.e.f. 26.07.1996 i.e. the date of issuance of the letter of dismissal.

9. Mr. Rakesh Kumar, President, Koyala Mazdoor Congress, Union, representative of the workman controverted the argument advanced on behalf of the Management and submitted that the workman was absent for a period of four months and eleven days due to his illness and the Management should have leniently considered the case of the workman. It is argued that in the Memorandum of Settlement under section 12(3) of the Industrial Dispute Act, 1947, arrived between the Management of M/s. Eastern Coalfields Limited and their workmen, represented by various Trade Unions dated 22.05.2007, in Point No. 7 Management agreed to reinstate the employees who were dismissed from service for the reason of absenting for a period for nine months and were below the age of forty-five years and such matter would be considered on merit. It is contended that the workman absented for a shorter period and his case should be considered for re-instatement.

10. It is also argued on behalf of the workman that the delinquent employee was not served with a copy of the Enquiry Officer's report before the Disciplinary Authority imposed the penalty, which is a harsh and extreme punishment. Mr. Rakesh Kumar urged that this is a fit case where the workman should be reinstated in his service and should receive back wages and all consequential benefits.

11. I have carefully considered the facts and circumstances of the case and evidence led by the parties. Undisputedly the workman was absent from his duty from 29.12.1995 to 10.05.1996, i.e. the date of issuance of Charge Sheet without any intimation. The workman having received the Charge Sheet which disclosed his unauthorized absence, causing dislocation of Company's work and inconvenience, participated in the Departmental Enquiry. He claimed to have been suffering from Tuberculosis and that he was under the medical treatment of one Dr. Kajal Chatterjee. The witness could not produce proper document to establish that he was suffering from Tuberculosis. The concerned doctor who was only a registered medical practitioner has not been examined. The medical prescriptions were not admitted in evidence as the author of such documents was not examined to verify the same.

12. In view of such facts and material the Enquiry Officer arrived at a finding that the petitioner was guilty of unauthorized absence causing dislocation of Company's work.

13. In my considerate view the Management went disarray after the stage of enquiry when without supplying a copy of the Enquiry Officer's report and any second Show cause notice, the Manager of Patmohna Colliery of M/s. ECL dismissed the workman from service without giving him any opportunity of hearing before imposing extreme punishment of dismissal.

14. In the case of **Union of India and Others Vs. Md. Ramzan Khan, 1999 (61) FLR, 376**, the Hon'ble Supreme Court held that "*When the Enquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive the Enquiry Officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the Enquiry Officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of Principle of natural justice*". Before passing an Order of termination it is therefore mandatory to issue a Second Show cause notice to the employee in order to provide an opportunity to the workman to plead for either no penalty or lesser penalty.

15. In the case of **Managing Director, Electronic Corporation of India Vs. B. Karunakar; Appeal (civil) 3056 of 1991**, the larger Bench of the Hon'ble Supreme Court held that "*It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority*

decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.” It is therefore crystal clear that before the Disciplinary Authority of Eastern Coalfields Limited issued the letter dated 26.07.1996 dismissing Dilip Muchi with immediate effect, the provisions of supplying a copy of Enquiry Officer's Report to the employee has not been complied. Therefore, there is an evident breach of the guiding principles laid down by the Hon'ble Supreme Court in the cited decisions. The order of dismissal of Dilip Muchi w.e.f. 26.07.1996 is therefore vitiated.

16. In the subsequent years a Memorandum of Agreement was entered between the Trade Unions representing the workmen in the collieries of Eastern Coalfields Limited and Management of Eastern Coalfields Limited on 22.05.2007, where it was agreed that the Management would re-instate the employees who were dismissed for the reason of absenting for a period of nine months and were below forty-five years of age. In the instant case which occurred about ten years prior to such Memorandum of Settlement was signed the workman was below forty-five years of age and he was absent for less than nine months. Therefore, it is a fit case where the Management should have considered the punishment imposed upon the workman in a lenient manner. An extreme measure has been adopted by the Management in dismissing a permanent employee for absenting from service, though he may not have been able to satisfactorily establish that he was suffering from illness during such period. It is therefore apparent that though the Memorandum of Settlement dated 22.05.2007 can have no retrospective effect, the fact that Natural Justice has been violated entails reinstatement of the workman, if he is otherwise fit and willing to perform.

17. in such view of the matter I find and hold that the order of dismissal passed against the workman in letter **Ref. No. PMC/C-6/92/1312** dated 26.07.1996 is violative of natural justice and is hereby set-aside. The Management of Patmohna Colliery of M/s. ECL is directed to issue notice to the workman Dilip Muchi for his reinstatement in service within a period of two months from the date of publication of Notification of Award under section 17 of the Industrial Dispute Act, 1947. The period of absence from duty due to dismissal from service from 29.12.1995 till the date of reinstatement shall be treated as Dies non. The workman shall not be entitled to any back wages or consequential relief for the period during which he did not render any service due to such disqualification. Accordingly, an Award is passed in favour of the workman for his reinstatement in service simpliciter.

Hence,

ORDER

Let an Award of reinstatement of the workman in the same post be passed in the light of my above findings. Copies of the Award be sent to the Ministry of Labour, Govt. of India, New Delhi for information and necessary action. The Reference is accordingly disposed of.

ANANDA KUMAR MUKHERJEE, Presiding Officer