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No. 41] NEW DELHI, NOVEMBER 1—NOVEMBER 7, 2020, SATURDAY/KARTIKA 10—KARTIKA 16, 1942

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

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

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

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

नई दिल्ली, 2 नवम्बर, 2020

का.आ. 979.—राष्ट्रपति, केंद्रीय सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, 1965 के नियम 9 के उपनियम (2), नियम 12 के उपनियम (2) के खंड (ख) और नियम 24 के उपनियम (1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के कार्मिक, लोक शिकायत और पेंशन मंत्रालय (कार्मिक और प्रशिक्षण विभाग) की का.आ. 2312, दिनांक 24 अक्टूबर, 2013 द्वारा प्रकाशित अधिसूचना को, उन बातों के सिवाय अधिक्रांत करते हुए, जिन्हें ऐसे अधिक्रमण से पूर्व किया गया है या करने का लोप किया गया है, आदेश करते हैं कि केंद्रीय प्रशासनिक अधिकरण में समूह 'क', समूह 'ख' और समूह 'ग' पदों की बाबत शास्तियां आरोपित करने के लिए सक्षम नियुक्ति प्राधिकारी और अनुशासन प्राधिकारी और अपील प्राधिकारी नीचे वर्णित अनुसूची में यथा विनिर्दिष्ट होंगे।

अनुसूची

क्रम स.	पदों का विवरण	नियुक्ति प्राधिकारी	शास्तियां आरोपित करने और वे शास्तियां जो यह आरोपित कर सकें, के लिए सक्षम प्राधिकारी (नियम 11 में मद संख्या के प्रति निर्देश से) प्राधिकारी	शास्तियां	अपील प्राधिकारी
(1)	(2)	(3)	(4)	(5)	(6)
(i)	सभी समूह 'क'	राष्ट्रपति	(क) राष्ट्रपति (ख) अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण	(क) सभी (ख) (i) से (iv)*	(क) – (ख) राष्ट्रपति
(ii)	समूह 'ख' (राजपत्रित)	अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण	(क) अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण (ख) (i) प्रधान न्यायपीठ के लिए अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण द्वारा नामित सदस्य, केंद्रीय प्रशासनिक अधिकरण (ii) संबंधित न्यायपीठ के विभागाध्यक्ष	(क) सभी (ख) (i) से (iv)*	(क) राष्ट्रपति (ख) अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण
(iii)	समूह 'ख' (अराजपत्रित)	अध्यक्ष/ संबंधित न्यायपीठ के विभागाध्यक्ष	(क) (i) प्रधान न्यायपीठ के लिए अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण (ii) संबंधित न्यायपीठ के विभागाध्यक्ष (ख) प्रधान न्यायपीठ के लिए अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण द्वारा नामित सदस्य, केंद्रीय प्रशासनिक अधिकरण	(क) सभी (ख) (i) से (iv)*	(क) (i) राष्ट्रपति (ii) अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण (ख) अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण
(iv)	सभी समूह 'ग'	प्रधान रजिस्ट्रार या रजिस्ट्रार या संयुक्त रजिस्ट्रार**	प्रधान रजिस्ट्रार या रजिस्ट्रार या संयुक्त रजिस्ट्रार**	सभी	प्रधान न्यायपीठ के लिए अध्यक्ष, केंद्रीय प्रशासनिक अधिकरण या संबंधित न्यायपीठ के विभागाध्यक्ष**

* केंद्रीय सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, 1965 के नियम 11 में छोटी शास्तियां वर्णित हैं।

** समूह 'ग' पदों के लिए नियुक्ति प्राधिकारी और अनुशासन प्राधिकारी संबंधित न्यायपीठ के प्रधान रजिस्ट्रार या रजिस्ट्रार या संयुक्त रजिस्ट्रार होगा, जैसी स्थिति हो। किसी भी स्थिति में, केंद्रीय सिविल सेवा (वर्गीकरण, नियंत्रण

और अपील) नियम, 1965 के नियम 11 में उल्लिखित प्रमुख दंड के लिए अनुशासन प्राधिकारी नियुक्ति प्राधिकारी के अधीनस्थ नहीं होगा। उस स्थिति में, जहां न्यायपीठ का वरिष्ठतम भरा हुआ स्वीकृत पद, जहां संबंधित समूह 'ग' कर्मचारी तैनात है, उसके नियुक्ति प्राधिकारी से कम है, अध्यक्ष (केंद्रीय प्रशासनिक अधिकरण) प्रधान न्यायपीठ के लिए सदस्य (केंद्रीय प्रशासनिक अधिकरण) या संबंधित न्यायपीठ के विभागाध्यक्ष को अनुशासन प्राधिकारी के रूप में नामित करेगा और ऐसे मामलों में अध्यक्ष (केंद्रीय प्रशासनिक अधिकरण) अपील प्राधिकारी के रूप में कार्य करेगा।

[फा. सं. ए-12013/6/2011-प्र.अ.]

इंद्र पाल नागपाल, उप सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 2nd November, 2020

S.O. 979.—In exercise of the powers conferred under sub-rule (2) of rule 9, clause (b) of sub-rule (2) of rule 12 and sub-rule (1) of rule 24 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 and in supersession of the notification of the Government of India, in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) published *vide* number S.O. 2312, dated the 24th October, 2013, except as respects things done or omitted to be done before such supersession, the President hereby orders that the Appointing Authority and Disciplinary Authority competent to impose penalties in respect of Group 'A', Group 'B' and Group 'C' posts in the Central Administrative Tribunal and the Appellate Authority shall be as specified in the Schedule mentioned below.

SCHEDULE

Sl. No.	Description of posts	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to item number in rule 11)		Appellate Authority
			Authority	Penalties	
(1)	(2)	(3)	(4)	(5)	(6)
(i)	All Group 'A'	President	(a) President (b) Chairman, Central Administrative Tribunal	(a) All (b) (i) to (iv)*	(a) - (b) President
(ii)	Group 'B' (Gazetted)	Chairman, Central Administrative Tribunal	(a) Chairman, Central Administrative Tribunal (b) (i) Member, Central Administrative Tribunal to be nominated by Chairman, Central Administrative Tribunal for Principal Bench (ii) Head of Department of the concerned Bench	(a) All (b) (i) to (iv)*	(a) President (b) Chairman, Central Administrative Tribunal
(iii)	Group 'B' (Non-Gazetted)	Chairman/ Head of Department of the concerned Bench	(a) (i) Chairman, Central Administrative Tribunal for Principal Bench (ii) Head of Department of the concerned Bench (b) Member, Central Administrative Tribunal to be nominated by Chairman, Central Administrative Tribunal for Principal Bench	(a) All (b) (i) to (iv)*	(a) (i) President (ii) Chairman, Central Administrative Tribunal (b) Chairman, Central Administrative Tribunal

(iv)	All Group 'C'	Principal Registrar or Registrar or Joint Registrar or Registrar**	Principal Registrar or Registrar or Joint Registrar **	All	Chairman, Central Administrative Tribunal for Principal Bench or Head of Department of the concerned Bench**
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* Minor penalties are mentioned in rule 11 of Central Civil Service (Classification, Control and Appeal) Rules, 1965.

** For Group 'C' posts, the Appointing Authority and Disciplinary Authority shall be the Principal Registrar or Registrar or Joint Registrar, as the case may be, of the concerned Bench. In any case, the Disciplinary Authority shall not be subordinate to the Appointing Authority for Major Penalties mentioned in rule 11 of Central Civil Service (Classification, Control and Appeal) Rules, 1965. In case where the senior-most filled up sanctioned post of the Bench, where the concerned Group 'C' employee is posted, is lower than his Appointing Authority, Chairman (Central Administrative Tribunal) shall nominate a Member (Central Administrative Tribunal) for the Principal Bench or Head of Department of the concerned Bench as Disciplinary Authority and in such cases, Chairman (Central Administrative Tribunal) shall act as the Appellate Authority.

[F. No. A-12013/6/2011-AT]

INDER PAL NAGPAL, Dy. Secy.

**मत्स्यपालन, पशुपालन और डेयरी मंत्रालय
(पशुपालन और डेयरी विभाग)**

नई दिल्ली, 2 नवम्बर, 2020

का.आ. 980.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप नियम (4) के अनुसरण में, मत्स्यपालन, पशुपालन और डेयरी मंत्रालय के पशुपालन और डेयरी विभाग के निम्नलिखित अधीनस्थ कार्यालयों में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80 प्रतिशत से अधिक हो जाने के परिणामस्वरूप मत्स्यपालन, पशुपालन और डेयरी मंत्रालय के इन कार्यालयों को एतद्वारा अधिसूचित करती है:

1. भारतीय पशु चिकित्सा परिषद,
ए-विंग, द्वितीय तल, अगस्त क्रांति भवन,
भीकाजी कामा प्लेस, नई दिल्ली-110066
2. चौधरी चरण सिंह राष्ट्रीय पशु स्वास्थ्य संस्थान,
बागपत, उत्तर प्रदेश-250609

[फा. सं. ई-11011/7/2020-रा.भा. भाग (2)]

गिरजा नन्द सिंह, संयुक्त सचिव

MINISTRY OF FISHERIES, ANIMAL HUSBANDRY AND DAIRYING**(Department of Animal Husbandry and Dairying)**

New Delhi, the 2nd November, 2020

S.O. 980.—In pursuance of sub rule (4) of Rule 10 of the Official Language (used for official purposes of the union) Rules, 1976 (as amended in 1987), The Central Government hereby notifies the following offices of the Ministry of Fisheries, Animal Husbandry and Dairying, Department of Animal Husbandry and Dairying, wherein the percentage of the staff, having working knowledge of Hindi has gone above 80% :-

1. VETERINARY COUNCIL OF INDIA,

A-Wing, 2nd Floor, Bhikaji Cama Place,
New Delhi-110066

2. CHAUDHARY CHARAN SINGH NATIONAL INSTITUTE OF ANIMAL HEALTH,

Baghpat, Uttar Pradesh-250609

[F. No. E-11011/7/2020-off.language PART (2)]

GIRJA NAND SINGH, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 27 अक्टूबर, 2020

का.आ. 981.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. हिन्दुस्तान पेट्रोलियम कोरपोरेशन लिमिटेड, विजयवाडा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 123/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.10.2020 को प्राप्त हुआ था।

[सं. एल-30012/5/2018-आई आर (एम)]

नवीन वैद्य, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th October, 2020

S.O. 981.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 123/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Hindustan Petroleum Corporation Limited, Vijaywada and their workmen, received by the Central Government on 27.10.2020.

[No. L-30012/5/2018-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 7th day of August, 2020**INDUSTRIAL DISPUTE No. 123/2018****Between:**

Sri Vemulakonda Rambabu,
S/o Laxmana Rao, G. Konduru Main Road,
Attukur X Road, G. Konduru (P.O.) & (M),
District -Krishna (A.P.)-521229.

...Petitioner

AND

1. The Chief Installation Manager,
M/s. Hindustan Petroleum Corporation Limited,
Kattubadipalem, Vijayawada Terminal,
District-Krishna, Andhra Pradesh.
2. Sri B. Kabeerdas, Contractor,
M/s. Sai Sujatha Engineering Works,
D.No. 8-107, Regulavari Street,
Near Railway Station Centre,
Kondapalli, District-Krishna (A.P.)
3. The Chief Regional Manager,
Hindustan Petroleum Corporation Limited,
H.No.9-1-130/1, S.D. Road, Post Box No.5,
Secunderabad. Telengana.

...Respondents

Appearances:

For the Petitioner : None

For the Respondent : M/s. K. Udaya Sri, P. Sudheer Rao, Priyanka Singh & Prasen Gundavaram,
Advocates**AWARD**

The Government of India, Ministry of Labour by its order No. L-30012/5/2018-IR(M) dated 1.11.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Hindustan Petroleum Corporation Limited and their workman. The reference is,

SCHEDULE

“Whether the action of the management of M/s. Hindustan Petroleum Corporation Limited a Contractor M/s. Sai Sujatha Engineering works Kattubadipalem, Vijayawada Terminal Vijayawada in not reinstate and regularizing into the services of Sri V. Rambabu, Contract Worker is legal and justified? If not, what the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 123/2018 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.
3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute the case. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 7th day of August, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 अक्टूबर, 2020

का. आ. 982.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. हिन्दुस्तान पेट्रोलियम कोरपोरेशन लिमिटेड, विशाखापटनम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 87/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.10.2020 को प्राप्त हुआ था।

[सं. एल-30011/65/2017-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 27th October, 2020

S.O. 982.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Hindustan Petroleum Corporation Limited, Visakhapatnam and their workmen, received by the Central Government on 27.10.2020.

[No. L-30011/65/2017-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 4th day of August, 2020**INDUSTRIAL DISPUTE No. 87/2018****Between:**

The General Secretary,
Petroleum Workers Union,
B-12 East, Yarada Park, Malkapuram,
Visakhapatnam -530 011.

...Petitioner Union

AND

The Executive Director,
M/s. Hindustan Petroleum Corporation Limited,
Visakha Refinery, Post Box No.15,
Visakhapatnam – 530 011.

...Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. K. Udaya Sri & P. Sudheer Rao, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-30011/65/2017-IR(M) dated 2.5.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Hindustan Petroleum Corporation Limited and their workman. The reference is,

SCHEDULE

“Whether the action of the management of HPCL Visakha refinery, Visakhapatnam that the workmen espoused by the Petroleum Workers Union does not fall within the definition of “employee” as provided in section 2(13) of Payment of Bonus Act 1965 and are not coming under the purview of the Bonus Act is correct?

Whether the demand of Petroleum Workers Union for stoppage of the implementation of Productivity Incentive Scheme as it has been introduced unilaterally by the management of HPCL Visakha Refinery, Visakhapatnam and it is not beneficial to the non-management employees of HPCL Visakha

refinery, Visakhapatnam is just, fair and legal? If yes, what relief the workmen are entitled to (if any) and what other directions (if any) are necessary in this regard?"

The reference is numbered in this Tribunal as I.D. No. 87/2018 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute the case. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 4th day of August, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 अक्टूबर, 2020

का. आ. 983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इंशोरेंस कोरपोरेशन आफ इंडिया, नारासोपेटा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 118/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.10.2020 को प्राप्त हुआ था।

[सं. एल-17012/39/2014-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 27th October, 2020

S.O. 983.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 118/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Life Insurance Corporation of India, Narasaroapeta and their workmen, received by the Central Government on 27.10.2020.

[No. L-17012/39/2014-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer
Dated the 17th day of August, 2020

INDUSTRIAL DISPUTE No. 118/2014

Between:

Sri Bakka Sanjeeva Rao,
S/o B Pedha Jaypati,
I.P. Nagar,
Ravipadu (P.O.),
Narasaraopeta (M). Guntur Dist.

...Petitioner

AND

1. The Sr. Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, Kennedy Road,
Machilipatnam (A.P.)-521001.
2. The Branch Manager,
LIC of India,
Narasaraopeta,
Guntur Dist. (A.P)

...Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : Sri B.S.R. Murthy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17012/39/2014-IR(M) dated 8.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

“Whether the removal from service of Sri B. Sanjeeva Rao, Ex-Temp. Class IV, LIC of India, Narasaraopeta Branch w.e.f. 25.1.2013 is legal and justified? If not, what other relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 118/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has nothing to raise any claim against the Respondents. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 17th day of August, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 अक्टूबर, 2020

का. आ. 984.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इंशोरेंस कोरपोरेशन आफ इंडिया, मछलीपटनम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 35/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.10.2020 को प्राप्त हुआ था।

[सं. एल-17012/28/2013-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 27th October, 2020

S.O. 984.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Life Insurance Corporation of India, Machilipatnam and their workmen, received by the Central Government on 27.10.2020.

[No. L-17012/28/2013-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

Present: Sri Muralidhar Pradhan, Presiding Officer
Dated the 19th day of August, 2020

INDUSTRIAL DISPUTE No. 35/2014**Between:**

Sri P. Basava Shankara Roa,
D.No.21-497-4-2,
Lakshmana Rao Puram,
Machilipatnam – 5210001.

...Petitioner

AND

1. The Sr. Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, Kennedy Road,
Machilipatnam (A.P.)-521001.
2. The Branch Manager,
LIC of India,
CB-II Branch,
Kennedy Road, Machilipatnam-521001.

...Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-17012/28/2013-IR(M) dated 18.2.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

“Whether the removed from service of Sri P. Basava Shankara Rao, Ex-Temp. Class IV, LIC of India, Machilipatnam w.e.f. 21.1.2013 is legal and justified? If not, what other relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 35/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has nothing to raise any claim against the Respondents. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 19th day of August, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 अक्टूबर, 2020

का. आ. 985.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनापावर कन्ट्रक्टर्स, मै. आन्ध्रा सीमेंट लिमिटेड, विशाखा सीमेंट वर्क्स, जेपी ग्रुप आफ कम्पनी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 17/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.10.2020 को प्राप्त हुआ था।

[सं. एल-29012/30/2016-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 27th October, 2020

S.O. 985.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.17/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Manpower Contractors, M/s. Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company, and their workmen, received by the Central Government on 27.10.2020.

[No. L-29012/30/2016-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 13th day of July, 2020**INDUSTRIAL DISPUTE No. 17/2017****Between:**

Sri Gajji Appa Rao,
S/o Chennodu Taata,
Gullepalli (V),
Sabbavaram (M),
Distt. Visakhapatnam (A.P.)-531035.

...Petitioner

AND

1. The Senior Vice President & Plant Head,
Andhra Cements Limited, Jaypee Group,
Visakha Cement Works, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029.
2. M/s. Aztech Services,
Manpower Contractors,
F-3, Sair Krishna Towers, Road No.3,
Jagannadha Raju Nagar, Venkojipalem,
Visakhapatnam -530 022.

...Respondents

Appearances:

For the Petitioner : M/s. P.V. Giridhar, B.S.Chalam & B. Ramu, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/ 30/ 2016-IR(M) dated 9.5.2017 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited, Visakhapatnam and their workman. The reference is,

SCHEDULE

“Whether the action of the management of Andhra Cements Limited, Visakha Cement Limited, Visakha Cement Works, Jaypee Group of Company in not considering Sri Gajji Appa Rao, S/o Chennodu Taata, workman in service in contravention of Section 25 F of the Industrial Disputes Act, 1947, of else in not paying legal benefits for the past service rendered to Andhra Cement Company is legal and justified? If not, what relief the concerned workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 17/2017 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 13th day of July, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidenceWitnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 अक्टूबर, 2020

का. आ. 986.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनपावर कन्ट्रक्टर्स, मै. आन्ध्रा सीमेंट लिमिटेड, विशाखा सीमेंट वर्क्स, जेपी ग्रुप आफ कम्पनी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 16/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.10.2020 को प्राप्त हुआ था।

[सं. एल-29012/31/2016-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 27th October, 2020

S.O. 986.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Manpower Contractors, M/s. Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company, and their workmen, received by the Central Government on 27.10.2020.

[No. L-29012/31/2016-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present: Sri Muralidhar Pradhan, Presiding Officer
Dated the 20th day of July, 2020

INDUSTRIAL DISPUTE No. 16/2017**Between:**

Sri Gompa Eswar Rao,
S/o Pothanna,
Gullepalli (V),
Sabbavaram (M),
Distt. Visakhapatnam (A.P.)-531035.

...Petitioner

AND

1. The Senior Vice President & Plant Head,
Andhra Cements Limited, Jaypee Group,
Visakha Cement Works, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029.
2. M/s. Aztech Services,
Manpower Contractors,
F-3, Sair Krishna Towers, Road No.3,
Jagannadha Raju Nagar, Venkojipalem,
Visakhapatnam -530 022.

...Respondents

Appearances:

For the Petitioner : M/s. P.V. Giridhar, B.S.Chalam & B. Ramu, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/31/2016-IR(M) dated 9.5.2017 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited, Visakhapatnam and their workman. The reference is,

SCHEDULE

“Whether the action of the management of Andhra Cements Limited, Visakha Cement Limited, Visakha Cement Works, Jaypee Group of Company in not considering Sri Gompa Eswar Rao, S/o Pothanna, workman in service in contravention of Section 25 F of the Industrial Disputes Act, 1947, of else in not paying legal benefits for the past service rendered to Andhra Cement Company is legal and justified? If not, what relief the concerned workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 16/2017 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 20th day of July, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 अक्टूबर, 2020

का. आ. 987.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनपावर कन्ट्रक्टर्स, मै. आन्ध्रा सीमेंट लिमिटेड, विशाखा सीमेंट वर्क्स, जेपी ग्रुप आफ कम्पनी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 15/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.10.2020 को प्राप्त हुआ था।

[सं. एल-29012/33/2016-आई आर (एम)]

नवीन वैद्य, उप निदेशक

New Delhi, the 27th October, 2020

S.O. 987.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Manpower

Contractors, M/s. Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company, and their workmen, received by the Central Government on 27.10.2020.

[No. L-29012/33/2016-IR(M)]

NAVIN VAIDYA, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer
Dated the 23rd day of July, 2020

INDUSTRIAL DISPUTE No. 15/2017

Between:

Sri Siramreddy Aabaddam,
S/o Sanyasayya,
Mogalipuram (V),
Sabbavaram (M),
Distt. Visakhapatnam (A.P.)-531035.

...Petitioner

AND

1. The Senior Vice President & Plant Head,
Andhra Cements Limited, Jaypee Group,
Visakha Cement Works, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029.
2. M/s. Aztech Services,
Manpower Contractors,
F-3, Sair Krishna Towers, Road No.3,
Jagannadha Raju Nagar, Venkojipalem,
Visakhapatnam -530 022.

...Respondents

Appearances:

For the Petitioner : None

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/33/2016-IR(M) dated 9.5.2017 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited, Visakhapatnam and their workman. The reference is,

SCHEDULE

“Whether the action of the management of Andhra Cements Limited, Visakha Cement Limited, Visakha Cement Works, Jaypee Group of Company in not considering Sri Siramreddy Aabaddam, S/o Sanyasayya, workman in service in contravention of Section 25 F of the Industrial Disputes Act, 1947, of else in not paying legal benefits for the past service rendered to Andhra Cement Company is legal and justified? If not, what relief the concerned workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 15/2017 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.
3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 23rd day of July, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 अक्टूबर, 2020

का. आ. 988.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका ग्रामीण बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 02/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2020 प्राप्त हुआ था ।

[सं. एल-12025/01/2020-आई आर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 28th October, 2020

S.O. 988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of Karnataka Gramin Bank and their workmen, received by the Central Government on 28.10.2020.

[No. L-12025/01/2020-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

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

DATED : 16TH OCTOBER, 2020

PRESENT : JUSTICE SMT. RATHNAKALA, Presiding Officer

I.D No. 02/2016

I Party

Sh. Venkatesh,
Hirevenkalakunte,
Tq : Yelburga
Dist : Koppal 583 236.

II Party

The General Manager,
Karnataka Gramin Bank,
Head Office,
Bellary - 583 103.

Appearance

Advocate for I Party : Mr. B. M. Madhava

Advocate for II Party : Mr. B. C. Prabhakar

AWARD

1. The Petitioner being the former employee of the erstwhile 'Pragathi Krishna Gramin Bank' / presently 'Karnataka Gramin Bank' is challenging the order passed by the then employer in dismissing him from service, as certain charges came to be proved against him in a Departmental Enquiry.

2. His case is while working as Clerk in the 2nd Party at Hiremannapur, he was issued a charge sheet dated 16.12.2013 which was followed by Domestic Enquiry: Enquiry Officer was biased and failed to conduct the Enquiry in accordance with the principles of natural justice. He submitted his perverse and biased findings against the 1st Party stating that the charges were proved, even before defence argument was submitted to him. The charge sheet, suspension order and impugned punishment are signed by different persons as Disciplinary Authority. Hence, the entire Enquiry proceedings is illegal. He is not responsible for alleged fraudulent transaction.

On the above, 1st Party claims for reinstatement with full back wages and other benefits.

3. The claim is contested by the 2nd Party. It is stated in the counter statement,

that the 2nd Party is a Bank constituted under RRB act 1976 and sponsored by Canara Bank and jointly owned by Canara Bank, Government of India and Government of Karnataka. It came into existence w.e.f 12.9.2005 by virtue of Government of India notification dated 12.9.2005 with the amalgamation of four Gramin Banks namely, Sahyadri Gramin Bank, Tungabhadra Gramin Bank, Kolar Gramin Bank and Chitradurga Gramin Bank. Subsequently, vide notification dated 23.08.2013 issued by the Government of India, Ministry of Finance, Pragathi Gramin Bank and Krishna Gramin Bank were amalgamated to Pragathi Krishna Gramin Bank. The Service Conditions of the employees of the Bank are governed by Pragathi Krishna Gramin Bank (Officers and Employees) Service Regulations, 2013.

It is further stated that the 1st Party joined the service of the 2nd Party on 27.04.1984: while working at Hiremannapur between 13.8.2008 to 12.5.2012 as Office Assistant, he committed irregularities with the mutual connivance of Sh. Udaya Ravi, S/o Doddappa, a customer and caused large scale conversion and misappropriation of funds of the Bank as detailed in the charge sheet dated 16.12.2013. During the Enquiry, 1st Party was given all reasonable opportunities and the Enquiry held against him was legal, proper and justified. The findings of the Enquiry Officer are based both on oral and documentary evidence, tendered during the Enquiry. The Enquiry Officer has given cogent reasoning in coming to his conclusion. The Disciplinary Authority forwarded a copy of the Enquiry Report to the 1st Party, calling for his Representation. He submitted his Representation vide letter dated 28.12.2014 but the same was not found satisfactory. Therefore, Show Cause notice dated 02.02.2015 was issued to the 1st Party proposing the punishment of dismissal from service. He was given opportunity of personal hearing also. He appeared for the personal hearing and made his written submissions. On perusal of the records, the disciplinary authority was satisfied about the reasonableness of the findings of the Enquiry Officer. Considering the seriousness of the proved charges, the punishment of dismissal from service w.e.f 25.02.2015 was ordered. Before passing the impugned order, his past records were also looked into. The appeal filed by him against the dismissal order did not find any merit to be interfered by the Appellate Authority.

4. On the rival pleadings, touching the fairness of the Domestic Enquiry, a preliminary issue was framed: 2nd Party produced the Enquiry Records, same were marked as Exhibit M-1 to M-19 with the consent of learned Counsel Sh. BMM for the 1st Party. Considering the submission made at the bar the preliminary issue was answered in affirmative by upholding the procedure adopted by the Enquiry officer during the Enquiry. The legal contentions raised by the 1st Party were kept open for consideration at the time final adjudication on merits. The challenge to the Enquiry Report was also kept open for consideration at the time of final adjudication. The 1st Party thereafter adduced evidence that he is not employed anywhere for gain after his dismissal. He also alleged that the Branch Manager for the relevant period was let free by imposing minor punishment, whereas, he alone is victimised.

5. Both parties have submitted written arguments, perused the records.

The charge sheet dated 16.12.2013 which was subject matter of the Enquiry runs into pages. Nine witnesses were examined by the Management, 107 documents were marked for them. No document was produced by the Defence. All the witnesses were cross examined by the Defence. However, no defence evidence was adduced.

The 1st Party was charge sheeted on 3 counts.

Firstly, One Banker's cheque purchased by Menedal Gram Panchayath and four cheques by Kandkur Gram Panchayath favouring Pragati Gramin Bank Hiremannapur branch were collected by Hiremannapur

branch in favour of one Sh. Udaya Ravi, account holder of SJJND 76, on the basis of the letters issued by Kandakur Gram Panchayath. (The details of the 5 cheques as mentioned in the charge sheet) -- The purpose of issuing above instruments in favour of Hiremannapur branch was not mentioned anywhere: Hiremannapur branch and / or Sh. Udaya Ravi are no way connected with the above instruments: CSE lodged these instruments, prepared the connected slips, allegedly in connivance with Sh. Udaya Ravi, he forged the letter in the name of Gramin Panchayath: in the OSC register he mentioned the payee's name as Shri Udaya Ravi though the payee is the Bank.

Secondly, Two cheques issued by Gouripur Gram Panchayath and One cheque issued by Dhanapur Grama Panchayath favouring Pragati Gramin Bank, without any endorsement were collected by Hiremannapur branch in favour of Sh. Udaya Ravi. (The details of the three cheques are as mentioned in the charge sheet as above). These instruments were lodged by CSE as if payee was Sh. Udaya Ravi in order to mislead his supervisors and to facilitate credit of proceeds to the account SJJND 76 of Sh. Udaya Ravi: the purpose of issuing above instruments was not mentioned anywhere with fraudulent motives: all the slips were prepared by the CSE.

Thirdly, he illegally gained access to nine cheques issued by Tahasildar Kushtagi to 11 beneficiaries. (The details of 9 cheques are mentioned in the charge sheet). The OSC no. were not recorded in concerned register: he prepared the schedule, slips, challans etc., and on realisation from Kushtagi branch credited the proceeds to SB A/c no. 3972 of one Sri. Veeresh Hasgal who is unconnected with the instruments: he tampered the IBA number 260 dated 08.05.09 of Kushtagi branch and materially altered the OSC number intentionally to credit the proceeds to the SB A/c no. 3972 of Veeresh Hasgal: all the 9 instruments were endorsed by him without the knowledge of Manager: he withdrew Rs. 8,900/- from SB 3972 by using a forged withdrawal slip no. 600089 dated 9.5.2009 and misappropriated the amount. He has committed misconduct within the meaning of regulation of PKGB service regulations 2013 which is punishable under regulation 39 2 (b).

6. During the Enquiry, 9 witnesses were examined for the Management and 96 documents were exhibited for them, there was no rebuttal evidence. Among the witnesses examined, MW-1 was the then Office Attendant – MW-2 was the Office Assistant who worked in the Branch between 15.12.2008 to July 2009 – MW-3 was the Senior Manager of Kushtagi branch for the period 13.6.2011 to 17.5.2014 – MW-4 has served as Manager of the Branch between 21.6.2011 to 26.5.2012 – MW-5 has served as Branch Manager between 10.9.2008 to 20.7.2011 – MW-6 is the present Manager – MW-7 is the Ex. PDO (Panchayath Development Officer) of Kandakur Gram Panchayath – MW-8 is the handwriting and finger prints expert: she had examined the withdrawal slips pertaining to charge number 3 and stated that these withdrawal slips are not in the original hand writing of the account holder Sh. Veeresh Hasgal SB A/c 3972 – MW-9 is the Investigating Officer.

7. Interestingly, the Enquiry Report is cryptic without detailed appreciation of the evidence adduced: it is just a compilation of the evidence in brief. The list of documents, list of witnesses, description of the documents produced and deposition of each of the witnesses in brief are annexed to the Enquiry Report. It is a fact borne from the Records that the 1st Party represented to the Disciplinary Authority that without waiting for the brief from the defence the Enquiry Officer has submitted the Enquiry Report. The Enquiry Officer referring to evidence adduced and Documents marked for the Management infers that the Bank as well as Mr. Udaya Ravi were not entitled to receive the payment under the instruments in question. MW-4 - the Branch Manager between 21.06.2011 to 26.05.2012 had stated to the effect that due to his workload at the Branch and faith in CSE he had not verified all slips thoroughly: CSE used to verify the slips using his ID. Acting on his deposition, the Enquiry Officer bailed out the witness in respect of the collection of instruments MEx 27 to 32. Likewise, relying on the evidence of MW-5, the Manager for the period between 10.09.2008 to 20.07.2011 who has stated that the witness was new to the system BANC 724 which was in go at Hiremannapur Branch, records that the witness like MW-4 was dependent on CSE for all internal work.

That led him to arrive at the conclusion “CSE was able to manage illegal act of crediting the proceeds of MEx 27 to 32 (cheques from PGB Kushtagi, Axis Bank Gangawati and the Syndicate Bank Gangawathi) and MEx 51 and 52 (Banker's cheque dated 05.07.2011 of Kushtagi, 29.06.2011 of Kushtagi and for Rs. 4,31,875/- and credit slip dated 05.07.2011 for the same amount SJJND 76 of Udaya Ravi): CSE has not acted with good faith. He has created false document with Sh. Udaya Ravi, illegal conversion and committed fraud.”

Thus, charge I and II were held proved. In respect of the charge no. 3 – MW-2 was the Cashier as on the date of payment of Ex M-15 (withdrawal slip dated 09.05.2009 of SB 3972 for Rs. 8,900/-).

8. It had come in her deposition that she had seen and credited the slips, MEx 12-15 (BDA dated 08.05.2009 for Rs. 9,000/- of Kushtagi branch, credit slip dated 9.05.2009 for Rs. 8910/- of SB 3972 OSC 41/09, credit slip dated 9.5.2009 for Rs. 90 commission for OSC 41/09 and the withdrawal slip dated 09.05.2009 of SB 3972 for Rs. 8900/-). Her explanation for the lapses on her part was, when enquired about the

correction made in MEx 12, CSE had told her that correction is authenticated by an officer: she had no knowledge of the related OSCs at the time of making payment and she did not remember to whom she had made payment. The Enquiry Officer without a filament of doubt accepted her version to hold CSE alone responsible for the misconduct. Though Mr. Veeresh Hasgal was not brought to the Enquiry, the Enquiry Officer accepted the written statement MEx 105 given by him before Investigating Officer denying withdrawal of Rs. 8900/- during 2009 and also disowning the signature on the withdrawal slip in his name etc. The evidence of the handwriting expert was to the limited extent that the signature on MEx 15 was not made by the depositors of SB 3972 (Mr. Veeresh Hasgal). MW-5 disputed the transactions pertaining to the instruments MEx 3 to 11 (Account payee cheques issued in favour of 9 different persons) though he was on duty on that day. Thus, Enquiry Officer proceeded to record his finding that CSE is guilty of charge no. 3.

9. The Disciplinary Authority while passing the punishment order addressed each of the objection raised by the 1st Party against the Enquiry Report. With regard to the discrepancy that suspension order charge sheet are signed by different persons, the Disciplinary Authority recorded that suspension order is passed by Competent Authority as per the provisions of “The Staff Service Regulation of the Bank” and being the highest authority in the Bank the Chairman has signed the charge sheet in exercise of powers conferred under Staff Service regulation of the Bank. The Appellate Authority also dealt with each of the grounds raised in appeal memo and dismissed the appeal.

10. The 1st Party had raised his objection about allowing the Management to mark Photostat copies of some of the documents without production of the original and not examining the witnesses whose statements were relied by the Enquiry Officer and also for not taking the written statement by him. His objection in respect of marking photocopies is brushed aside by the Disciplinary Authority by noticing that he had visited the vigilance cell on 19.6.2014 Head Office Bellary verified the documents and originals of the concerned letters and was furnished to investigating reports. With regard to not accepting the written brief submitted by him by the Enquiry Officer, the Disciplinary Authority has recorded the written brief was not submitted within the time allowed by the Enquiry Officer. These two objections having been properly addressed by Disciplinary Authority, thus, we are left with the question of ‘the perversity of the finding’, proportionality of the punishment and the issue of victimisation.

During the personal hearing, he had submitted to the Disciplinary Authority that the “*punishment proposed is too heavy.*” Before this Tribunal, he has stated to the effect that Sh. H.N. Hosur and thereafter, Sh. Hanumanthappa Rao who were the Branch Managers during the relevant period are spared by the 2nd Party by continuing them in service by imposing minor punishment. There is no counter say by the 2nd Party about this statement. Infact, the investigating officer had conducted a joint investigation against Sh. Hanumanthappa Manager and the 1st Party and had submitted report dated 06.09.2012 (MEx 95). His observation is as below

- 4) *It also appears that the officials of concerned Gram Panchayaths have had their share of foul play in the forgery and fraud. They have parted with the cheques to Sri. Udaya Ravi, though he was not connected to the amount in any manner.*
- 5) *Though, Sri. S. Hanumanthappa and Sri. H. N. Hosur managers have not taken care though they are aware that account payee cheque proceeds should be credited to within named payee only. They have failed to exercise caution and allowed the illegal credit of the amount. Sri. E. Venkatesh is instrumental in crediting the proceeds to Sri. Udaya Ravi's account.*
- 6) *Payee of the instrument under Sl. No. 5 is Gram Panchayath, Kandakur and instruments under Sl. No. 6,7 and 8 does not have any covering letter and does not have branch name. Yet they are credited to Sri. Udaya Ravi's account. Instruments under Sl. No. 6,7 and 8 are lodged by E. Venkatesh. All this indicate involvement of Sri. E. Venkatesh in the whole episodes.*
- 7) *Normally, when a cheque is received in the name of bank branch, branch should ascertain for what it is issued and who has issued. In the above cases the proceeds are credited to a single account. Hanumanthappa says he believed in Sri. Venkatesh and Sri. H. N. Hosur says he believed in both Sr. E. Venkatesh and Sri. Udaya Ravi. This cannot be held to be responsible acts.*

He has submitted another investigation report dated 06.09.2012 pertaining to other allegations against the 1st Party workman but did not find any merit in the allegation.

11. As such there was no complaint or report against the 1st Party, it appears the Enquiry was an offshoot of Enquiry initiated by Lokayukta against Mr. Udaya Ravi under the provisions of Prevention of Corruption Act in CR No 4/2013. The seizure Mahzar conducted by the Lokyukta Police – under which 5 documents were seized from the Bank in the presence of witnesses, was marked before the Enquiry Officer as MEx 72.

However, no information is made available thereafter about the fate of the criminal case against Mr. Udaya Ravi.

As of now, it is not shown that the Bank suffered financial loss due to the misconduct alleged and held proved during the Enquiry, the allegation against him is by his unlawful association and connivance with Mr. Uday Ravi, he rendered the Bank a conduit, with illegal siphoning of the public money. For want of better particulars of the criminal case initiated against Uday Ravi, and also in absence of direct evidences, it cannot be said with certainty that in connivance with Sh. Udaya Ravi he made fictitious credits, forged the documents etc. As far as charge no. 3 is concerned, it is about abetment, fraud, defalcation, falsification of official records of the Bank and misappropriation of Bank's funds and exposing the Bank to potential financial risk of Rs. 41,42,417/-. During the Enquiry there was no such evidence demonstrating that the Bank is made liable for the sum of Rs. 41,42,417/- due to the alleged acts of the 1st Party. Though the allegations attract the penal provisions of Indian Penal Code, it appears no such complaint is filed against the 1st Party to the jurisdiction police. The 2 Managers for the relevant period are let off by the investigating officer with superficial remark though he suspected connivance of officials of the Bank in the fraudulent transaction.

12. There is no counter to the statements of the 1st Party that they are continued in service by imposing minor punishment. If that is so, definitely it is a case of victimisation. Though the Managers being superior officers cannot be equated with the clerical staff, while entrusting the onus of commission/omission, in due performance of duty, the Officer who is on the superior position over the subordinate, shall bear the responsibility. Letting the higher officials who as per the investigation report were part of the alleged transaction on flimsy ground and fixing the 1st Party alone in the alleged misconduct by imposing capital punishment of dismissal from service in the midway of his career was the extreme action which cannot be endorsed. The 2nd Party has placed reliance on the following judgments

- a) 2000-(2)-LLJ 1395 between: Janatha Bazar South Kanara Central Co-operative Wholesale Stores Ltd. & Others V/s Secretary, Sahakari Nourakara Sangha & Others.
- b) 2009 LLR-168-High Court of Karnataka-Between Syndicate Bank V/s M. Hanumanthappa
- c) AIR 2004 Supreme Court 4761-Between KSRTC V/s A.T. Mane
- d) 2008-I-CLR 888 Between Uttaranchal Transport Corporation V/s Sanjay Kumar Nautiyal

But no rule of thumb is laid down by the Higher Courts that whenever a misconduct is proved in a Departmental Enquiry the Labour Court / Tribunal cannot interfere with the punishment order. Even otherwise "proportionality of the punishment" is a matter over which this Tribunal undertakes while adjudicating legality and justification of a punishment order under the jurisdiction vested by Sec 11A of 'the Act'. For the observations in the preceding Para, hold despite the involvement / complicity of the 1st Party in the alleged misconduct, punishment of dismissal is extreme, hence, not legal and not justified. I, says so, firstly, for the reason that there is no financial implication by the alleged misconduct. Secondly, the Managers who were at the helm of affairs at the relevant point of time are allowed to continue in service.

He is dismissed from service w.e.f 25.02.2015. He has stated without employment from then onwards.

13. In the circumstances, reinstatement without back wages with continuity of service only for the purpose of calculation of his terminal benefits at the time of his superannuation would serve the ends of justice being met.

AWARD

The petition filed by Sh. Venkatesh under section 2A (2)and(3) of the Industrial Dispute Act is allowed.

The 2nd Party is directed to reinstate him into service without back wages with continuity of service only for the purpose of calculation of his terminal benefits at the time of his superannuation.

(Dictated to LDC, transcribed by him, corrected and signed by me on 16th October, 2020)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 28 अक्टूबर, 2020

का. आ. 989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 33/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2020 प्राप्त हुआ था ।

[सं. एल-12012/94/2016-आई आर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 28th October, 2020

S.O. 989.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.10.2020.

[No. L-12012/94/2016-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 19TH OCTOBER 2020**PRESENT** : JUSTICE SMT. RATNAKALA, Presiding Officer**CR 33/2017****I Party**

Sh. Girish G. Kulkarni,
H No. 844, Junipet,
Near Gosbalappa Temple,
Ramadruga,
Belagavi - 591123.

II Party

The Assistant General Manager,
State bank of India, Mysore Region V,
Opp Maratha Mangal Karyalay,
Near Railway Over Bridge,
Khanapur Road,
Belgaum – 590 011

Appearance:

Advocate for I Party : Mr. K. R. Patil

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/94/2016-IR(B-I) dated 12.10.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the management of State Bank of Mysore, Regional Office, Belgaum is justified in awarding the punishment of discharge from services to Sri Girish Kulkarni w.e.f. 2.5.2016? If not, what are the reliefs the workman is entitled to?”

1. Both parties are represented by their respective learned Counsels.

The burden of proving the referred issue is on the 2nd Party. But they have not filed their statement justifying the action taken by them against the 1st Party workman. The dispute is raised by the 1st Party workman having grievance against the punishment order of discharge passed against him by the 2nd Party w.e.f. 02.05.2016. But he has not filed his claim statement to let the Tribunal know what is the nature of relief he is seeking for.

2. In the given circumstances, it is inevitable to hold that the Management of State Bank of Mysore failed to establish justification of the punishment of discharge from service ordered against Sh. Girish Kulkarni w.e.f. 02.05.2016.

The workman having failed to prosecute his claim before this Tribunal is not entitled for any relief.

AWARD

The reference is rejected.

(Dictated to LDC, transcribed by him, corrected and signed by me on 19th October, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 28 अक्टूबर, 2020

का. आ. 990.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी कौथोलिक सीरीयन बैंक लि. प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 25/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2020 प्राप्त हुआ था ।

[सं. एल-12025/01/2020-आई आर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 28th October, 2020

S.O. 990.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of The Catholic Syrian Bank Ltd. and their workmen, received by the Central Government on 28.10.2020.

[No. L-12025/01/2020-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT, ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer.
(Wednesday the 21st day of October 2020, 29 Asvina 1942)

ID No. 25/2019

Workman : Sri. Ulahannan Varghese
Karathuruthil Veedu
Valamangalam North
Thuravoor P.O., Cherthala
Alappuzha - 688532

By Adv. Ashok B. Shenoy

Management : The Catholic Syrian Bank Ltd
Head Office
Thrissur – 680020
By M/s.B.S. Krishnan Associates

This case coming up for final hearing on 21.10.2020 and this Tribunal-cum-Labour Court passed the following on the same day:

AWARD

1. This is a dispute filed U/s 2A(2) of Industrial Dispute Act, 1947.
2. The workman was an employee of catholic Syrian bank. He was dismissed from the service of the Bank for alleged charges of misappropriation. The workman filed this application,

- a. To declare the punishment of dismissal from service imposed on him by the management as illegal and unjust
 - b. To direct the management to reinstate the workman in service with full back wages, continuity of service and other attended benefits
 - c. Grant such other further reliefs as deemed fit by this Tribunal
3. The workman approached the Regional Labour Commissioner (C) for a conciliation in the matter. Since the conciliation efforts failed, the workman approached this Tribunal for the above reliefs.
4. Notice was issued to parties and both the workman and the management entered appearance on 16.12.2019. When the matter was posted for written statement of the management on 21.10.2020, the workman filed a memo dt.28.09.2020 withdrawing the industrial dispute. Since the workman is not interested to prosecute the industrial dispute, there cannot be any adjudication on the reliefs claimed by the workman U/s 2A (2) of the ID Act.
5. In the above circumstances a 'no dispute' award is passed in this case.
- The award will come into force one month after its publication in the official Gazette.
- Dictated to the Personal Assistant, transcribed and passed by me on this the 21st day of October, 2020.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2020

का. आ. 991.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोचीन के पंचाट (संदर्भ सं. 19/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.10.2020 को प्राप्त हुआ था।

[सं. एल-12012/89/2012-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 29th October, 2020

S.O. 991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ERNAKULAM, Cochin as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 29.10.2020.

[No. L-12012/89/2012-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

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

ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer.
(Monday the 24th day of February 2020, 5 Phalgun 1941)

ID No. 19/2013

Workman : Shri.Sudish U. R.
Unnakappaputhenpurayil House
S. Marady P.O.
Muvattupuzha
Ernakulam - 68

By Adv.Ashok B. Shenoy

Management : The Regional Manager
Bank of Baroda
Regional Office
Vasudeva Building, T.D. Road
Ernakulam –682011

By M/s. B. S. Krishnan Associates

This case coming up for final hearing on 09.01.2020 and this Tribunal-cum-Labour Court on 24.02.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12012/89/2012-IR(B-II) dated 06.03.2013 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“ Whether the action of the management of Bank of Baroda in terminating the services of Shri.Sudhish U.R. from the post of temporary employee from Muvattupuzha branch is illegal ? What benefit he is eligible to get ?”

3. Workman was employed in the subordinate cadre as Peon in the service of the management Bank at their Muvattupuzha branch in Ernakulam district. He was employed in the service of the Muvattupuzha branch from 22.01.2009. The workman had been employed continuously and regularly against a regular and permanent vacancy to do regular and permanent nature of duties of Peon. He had been discharged all the duties entrusted to him honestly and diligently without any complaints whatsoever. While so on 16.08.2011, the services of the workman were orally terminated by the Manager of Muvattupuzha branch of the management Bank. Aggrieved by the oral termination of the services, the workman raised an industrial dispute by submitting an application to the Assistant Labour Commissioner (C), Ernakulam, who is the Conciliation Officer seeking his intervention in the dispute and for conciliation of the dispute. The conciliation proceedings ended in failure on 16.10.2012 with no settlement having reached because of the adamant stand of the management. The termination of the services of the workman by the management amounts to retrenchment. The management Bank has not issued notice of retrenchment to the workman nor paid the workman wages in lieu of such notice as mandated by Sec 25F of ID Act, 1947. The retrenchment of the workman's service is therefore illegal, unjust and also null and void in law. It is also in violation of Para 522, 523 and 524 of Sastri Award. The employees much junior in service to the workman are retained in service by the management without any reason or cause. This is in violation of mandatory provisions in Sec 25G of ID Act, 1947 and Para 507 of Sastri Award. It was also pointed out that new hands are being employed by the management in their services against the very same work and jobs which the workman was doing in the management Bank, without affording the workman an opportunity of re-employment. This is in violation of Sec 25H of ID Act, clause 20.12 of 1st Bipartite Settlement dt.19.10.1966 and Para 493 of Sastri Award. Hence the termination of the workman is illegal, unjust and void apart from being stained by the malafide and victimization. The workman was treated by the management as a temporary workman against permanent vacancy just to deprive him of the status and privilege of a permanent workman. The management is in the habit of engaging employees on temporary basis against permanent vacancies one after another and retrenched them to be replaced by new hands in the same way. Such practice of the management amounts to unfair labour practice prohibited U/s 25T of ID Act, 1947 and violates Para 20.7 and 20.8 of 1st Bipartite Settlement and also Para 495 and 522 of Sastri Award. As per terms of clause 20.12 of 1st Bipartite Settlement dt.19.10.1966 the management is bound to retain and absorb the workman in regular service when the vacancy against which the workman was working is permanent and continues to exist. Since his retrenchment, the workman is without any job and income. Hence the action of the management in terminating the service of the workman is to be declared illegal, unjust and void and the workman is to be reinstated in service with full back wages, continuity of service and other attended benefits.

4. The management filed written statement denying the above allegations. The management is a nationalized public sector Bank. There are prescribed rules, procedures, policies and norms in the matter of recruitment into its regular services. For subordinate staff cadre, recruitment is made through notification to Employment Exchange and after complying with the formalities of test and interview. The instructions and guidelines of Govt of India and Reserve Bank of India in the matter of reservation are also strictly followed in the matter of recruitment. The competent authority for sanctioning of regular post in the subordinate staff cadre in the management Bank is General Manager (HRM) and the appointing authority is Regional Head. The

Branch Manager have no sanctioning or appointing authority in the management Bank. The workman in this dispute was not appointed in the management Bank by the competent authority. He was not engaged against any regular vacancy in the branch. He was not appointed as an employee of the Bank at any point of time and there is no employer-employee relationship between the workman and the management. The workman was intermittently engaged as daily wager on casual/temporary basis at the Muvattupuzha branch of the management Bank from 22.01.2009 to 16.08.2011. He was being paid appropriate wages on daily basis when he was engaged by the Branch Manager. He was not engaged 240 or more days at any point of time. The workman was not given any appointment letter and he was not subjected to any recruitment process. The workman was engaged by the Branch Manager who was not the appointing authority in the management Bank. Temporary and casual engagements are on day to day basis and such temporary hands have no right of employment in the management Bank. It is not correct to say that the workman was employed continuously and regularly against a regular and permanent vacancy to do regular and permanent nature of duties and he was discharging all the duties entrusted to him. It is also not correct to say that he was orally terminated on 16.08.2011. Even if he worked for more than 240 days that alone will not entitle him to claim reinstatement or regularization in the service of the Bank. The management Bank is a public sector nationalized bank and is a "state" under Article 12 of the Constitution of India. The appointment to any post in the management Bank is made only by complying with the statutory rules and regulations and directions issued by the Govt from time to time. The appointment in this subordinate staff cadre is done by the competent authority against sanctioned vacancies and also subject to fulfillment of eligibility criteria for such appointment. Normally appointment to subordinate cadre is done through Employment Exchange and if eligible candidates are not available the management resorts to other source of recruitment. The workman was never sponsored by the Employment Exchange and he was not subjected to any recruitment procedure and he was not appointed by a competent authority. It is baseless and incorrect to allege that the management has violated Sec 25F, 25G and 25H of the ID Act and the provisions of Bipartite Settlement and Sastri Award. Constitution of India envisages right of equality and equal opportunity in the matter of public employment under Article 14 & 16 of the Constitution. The management is a 'State' under Article 12 of the Constitution. There is no fundamental right in those who have been employed on daily wages or on contractual basis to claim regularization and absorption in the regular service. The workman is not entitled for the reliefs of reinstatement with continuity of service and back wages.

5. The workman filed a replication denying the allegations in the written statement filed by the management. According to the workman, when the branch was opened no permanent Peon was posted in the branch against a sanctioned post and the workman was employed against a regular and permanent vacancy and was doing the duties of a permanent Peon until his services were terminated on 16.08.2011. The workman was entrusted with the duties of a Peon and he had been doing the duties under the supervision of branch authorities and he was given access to all areas of premises including the security area of the branch. He had been regularly paid wages against wage voucher slips. The payments made are accounted against Bank's Profit & Loss account. He was also paid bonus for the period he was employed upto 16.08.2011, when his services are abruptly terminated. There is no rule, procedure, policies or the norms or any statutory or mandatory instructions regarding recruitment of Subordinate staff in the service of management Bank. There is no mandate that appointment or recruitment of Subordinate staff shall be done only through Employment Exchange. The wages paid to the workman is duly authorized by the Bank for years together. Hence the management's plea regarding appointment authority is irrelevant, false and baseless. No other person was appointed as Peon in Muvattupuzha branch when the workman was working in the branch. On many occasions he was paid wages even on Sundays. At no point of time the workman was put on notice that he is employed against a post not sanctioned by the management. On a perusal of the wages and bonus paid by the management to the workman, it is very clear that the workman worked for more than 240 days in a year prior to his termination. The workman was appointed as Peon from the 1st day of opening of the branch with the approval of the bank authorities as no permanent Peon was appointed in the branch to attend the permanent nature of duties in the branch. The management Bank is having 85 branches and 2 Administrative Offices in Kerala State and the total permanent subordinate cadre staff working in the State was only 90. There were many temporary Peons entrusted the duties of permanent nature. Management had regularized 37 temporary sub staff entrusted with duties of permanent nature during 2009-2011. As many as 1966 officers were recruited through campus selection and hence the claim of management that they follow the recruitment policy is false and misleading and only to deny employment to the workman. After terminating the workman on 16.08.2011, the management engaged another temporary employee as Peon in Muvattupuzha branch. The sponsorship by Employment Exchange is not a mandatory condition for employment in the post and job against which workman herein was employed in the management Bank. Temporary employment in preference or permanent employment is resorted by the Bank only in order to deny the workman the benefits available to permanent employees.

6. After completion of pleadings the workman examined himself as WW1 and marked exhibits W1 to W7. The workman also examined WW2 and marked exhibits W8 to W15 through him. Exhibits W8 to W15 were marked subject to objections by the management. Management examined MW1 and marked exhibits M1 to M6 through him. MW2 was also examined as a common witness in ID no.10/2013, 18/2013 and 20/2013.

7. On the basis of the pleadings and reference, the issues to be decided are;

1. Whether the action of the management in terminating the service of the workman w.e.f. 16.08.2011 was in accordance with the provisions of Sec 25F of ID Act ?
2. Whether the management violated any of the provisions of ID Act, Bipartite Settlement or Sastri Award while terminating the services of the workman?
3. Relief and cost ?

8. Issue nos. 1 & 2

According to the workman he was engaged by the management Bank on 22.01.2009 in the Muvattupuzha branch of the management Bank. He was engaged as a Peon and continued to be employed till 16.08.2011 continuously and regularly against a regular and permanent vacancy and was doing regular and permanent nature of duties of a Peon in the Bank. There is a confusion regarding the date of engagement of the workman as in the proof affidavit given by him it is averred that he worked in the Bank from 26.11.2007 when the Muvattupuzha branch of the management Bank started working. On 16.08.2011 the services of the workman was orally terminated by the Branch Manager. According to the learned Counsel for the workman, the oral termination of the workman amounts to retrenchment. However he was not issued any notice of retrenchment nor wages in lieu of notice mandated U/s 25F of ID Act, 1947. Retrenchment of the workman from service is therefore illegal, unjust, null and void in law. It is also in violation of Paras 522, 523 and 524 of Sastri Award. According to the learned Counsel for the management, the workman was never employed by the management Bank. However his services were intermittently used by the Bank from 22.01.2009 to 16.08.2011. He was also paid wages for the services rendered by him. His engagement was only temporary/casual on a day to day basis and the workman has no right of employment in the management Bank. The management Bank is a nationalized Bank and therefore follows prescribed rules and procedures for appointment in its regular service. For appointment in the subordinate staff cadre, recruitment is made through notification in the Employment Exchange and after complying with the formalities of test and interview. The workman was not given any appointment order and therefore there was no retrenchment of the workman by the management Bank. According to the learned Counsel for the workman, the policies and procedures relied on by the management are for the regular recruitment and the workman has no claim for regularization. With regard to the policies also the workman through WW2 established that the management Bank resorted to regularization of temporary and casual subordinate staff on the basis of settlement between the union and the management. It is also pointed out that as per Exbt.W9, there was a Bipartite Settlement between the management Bank and All India Bank of Baroda Employees Federation for absorption of casual/temporary peons/sweepers in 3 phases. As per Exbt.W8, it is pointed out that 37 temporary subordinate employees were appointed as permanent employees in Kerala branches during 2008-2011. The management relied on Exbt.M1 to point out that the HR resourcing policy covers the appointment of subordinate staff also. According to the learned Counsel for the management, General Manager(HRM) is the competent authority to sanction the post of sub staff in various zones. However the learned Counsel for the workman pointed out that the specific guidelines and criteria for recruitment in subordinate staff cadre forms part of Exbt.M1 as Annexure 1, which is not enclosed along with Exbt.M1. Further it is also seen that at Para 7.0 of Exbt.M1 that there is a provision of management to engage staff on temporary basis. Such temporary engagement also requires the approval of General Manager(HRM). It has come out through evidence of MW1 that the Muvattupuzha branch was not having any regular peon till 16.08.2011 and the services of the workman was terminated when a regular Peon joined the service of the branch. MW1 also admitted that he was the Branch Manager in Muvattupuzha branch of the management Bank from 30.11.2009 to 20.11.2012 and the workman was working in the branch as a temporary workman during his tenure in the Muvattupuzha branch. It was also admitted by MW1 that the accounts of Muvattupuzha branch was audited every year and the payment of wages were being done through Profit & Loss account/Sundry charges through vouchers was never objected to by the audit team. MW1 also admitted that the auditors never pointed out any irregularity in the engagement of the workman and the payments made to him. He also admitted that no action was ever taken against the managers for engaging the workman and making the payments. Hence it is clear that the engagement of the workman had the approval and the payments made to him were fully authorized.

9. The above discussion will clearly show that the workman was engaged by the management against a regular vacancy. Having found that the workman was engaged by the management Bank against a regular

vacancy, the further issue to be decided is whether his oral termination w.e.f. 16.08.2011 is in violation of the provisions of sec 25F of ID Act, 1947. The workman filed an Interlocutory Application seeking production of certain crucial documents to substantiate his claim that he worked with the management Bank continuously for more than 240 days, one year immediately prior to his retrenchment. The workman requested for production of the following documents.

1. Statement of Account No.31140100000842 maintained at Muvattupuzha branch of the management Bank in the name of the workman for the period from 29.04.2009 to 31.12.2012.
2. Ledger Account Statement of Sundry charges - others – account no.31140054511004 maintained at Muvattupuzha branch of the management Bank for the period from 22.01.2009 to 16.08.2011.
3. Debit vouchers relating to wages paid to temporary sub staff employees to the debit account no. 31140054511004 maintained at Muvattupuzha branch of the management Bank for the period from 22.01.2009 to 16.08.2011.
4. Form-C Bonus paid statement/Register under Payment of Bonus Act, 1965 of Muvattupuzha branch of the management Bank for the financial years ended 31.03.2009, 31.03.2010, 31.03.2011, 31.03.2012
5. Statement of Office Account – Bonus paid account no. 31140052431001 maintained at Muvattupuzha branch of the management Bank for the period from 22.01.2009 to 31.12.2012.
6. Debit vouchers relating to Bonus paid to employees to the debit of account no. 31140052431001 for the financial years 01.04.2008 to 31.03.2009, 01.04.2009 to 31.03.2010, 01.04.2010 to 31.03.2011 and 01.04.2011 to 31.03.2012; by Muvattupuzha branch of the management Bank
7. Peon delivery book maintained by Muvattupuzha branch of the management Bank for the period 13.07.2009 to 07.01.2012.
8. Copy of E-mail circular dt.19.02.2013 issued by HRM Department of management Bank, to all branches in Kerala Region, directing payment to all subordinate staff employees, pro-rata wages at the first stage of basic pay and all allowances thereon, as applicable to permanent subordinate staff employees.

The management produced following documents

1. True copy of the statement of account no.31140100000842 maintained at Muvattupuzha branch from 29.04.2009 to 08.11.2012
2. True copy of the Ledger Account Statement of Sundry charges - account no.31140054511004 of Muvattupuzha branch from 26.11.2007 to 29.10.2011
3. True copy of the available Debit vouchers relating to wages paid from 22.01.2009 to 16.08.2011.
4. True copy of the Form-C Bonus paid for the year 2010-11, 2011-12.

According to the learned Counsel for the workman, Exbt.M4 series of Debit vouchers and Exbt.M3 Ledger account statement of Sundry charges and Exbt.M5, the Form-C Return of Bonus paid to the employees are very crucial in establishing that the workman worked for more than 240 days, one year immediately prior to his oral termination. Exbt.M4 Debit vouchers with regard to the payments made to the workman from his date of joining till the date of his oral termination is very crucial since it shows the number of days that he worked with the management Bank in each year. The corresponding Ledger entries in Exbt.M3 will confirm the payments made. The Exbt.M5 Form-C Return of Bonus paid also will indicate the number of days that the workman worked in the Bank. The Form-C Register for payment of Bonus for the year 2010-11 shows that the workman worked with the management Bank for 365 days and he was paid an amount of Rs.8,400/- as bonus. The Form-C Register for payment of Bonus for the year 2011-12 shows that the workman was paid a bonus of Rs.3,500/- whereas the number of days that he worked with the Bank is left blank. Though the workman in his application requested for production of debit vouchers in respect of temporary staff for the period from 22.01.2009 to 16.08.2011 the management produced only very few Debit vouchers for the period from 21.02.2009 to 22.05.2010. It is very clear that the management failed to produce the crucial Debit vouchers for the period from 15.08.2010 to 16.08.2011 which could have categorically establish the number of days that the workman worked with the management Bank. Had the management produced the complete set of Debit vouchers, it is possible to arrive at the exact number of days that the workman worked during the relevant point of time. However it is possible to arrive at the number of days that he worked with the management Bank on

the basis of the Ledger account statement of Sundry charges ie., Exbt.M3. Having failed to produce these crucial documents the learned Counsel for the workman submitted that an adverse presumption will have to be drawn against the management. The learned Counsel relied on the decision of **Gauri Shankar Vs State of Rajasthan**, 2015 12 SCC 754. In the above case, the workman was working with the respondent and his case was that he was appointed against a permanent and sanctioned post w.e.f. 01.01.1987 till his services came to be retrenched and he had rendered service of more than 240 days in every calendar year and has received salary from the respondent department each month. The workman challenged the retrenchment as bad in law as the same is in violation of Sec 25F, 25G, 25H, 25T and 25U of the ID Act. The workman applied for production of the Muster Roll and the management failed to produce the relevant Muster Rolls. The Hon'ble Supreme Court relying on its earlier decisions in **Gopal Krishna G Ketker Vs Muhammed Haji Latheef**, AIR 1968 SC 1413 and **Murukesam Pillai Vs Manikyavasaka Pandara**, 1917 5 LW 759 held that even if the burden of proof does lie on a party, the Court can draw an adverse inference if he withholds important documents in his possession which can throw light on the facts of issue. The learned Counsel for the workman also relied on the decision of the Hon'ble Supreme Court in **Sriram Industrial Enterprises Ltd Vs Mahak Singh and others**, 2007 4 SCC 94, wherein the Hon'ble Supreme Court held that when the workman discharged their initial onus by producing the documents in their possession it is the responsibility of the management to disprove the claim of the workman that he did not work for more than 240 days with the management one year immediately prior to his/her termination. In this particular case the debit vouchers for payment to the workman is a crucial document in the custody of the management to substantiate his claim of working for more than 240 days in a year immediately before his retrenchment. Further the true copies of the Ledger account of Sundry charges of Muvattupuzha branch from 22.01.2009 to 16.08.2011 would show the details of payment of wages made to the workman during the relevant period. On a detailed analysis of the payment made to the workman as reflected in the Ledger statement of Sundry charges, it can be seen that the workman worked for more than 300 days for the period from 15.08.2010 to 16.08.2011 ie., one year immediately prior to his oral termination. The Bank account of the workman does not reflect all the payments made to him as per the Ledger account statement of Sundry charges. It is also seen from Exbt.M5 series that in the year 2010-11 the workman worked for 365 days and was paid a bonus of Rs.8400/- and in the year 2011-12 the workman was paid a bonus of Rs.3500/-. The Debit vouchers are critical documents to substantiate the claim of the workman. According to MW1, the debit vouchers are stitched, handled and kept in safe custody. Since the management failed to produce these documents, an adverse inference can also be drawn against the management. The workman proved that he worked for more than 240 days during one year immediately before his termination. Hence the management is liable to follow the conditions precedent before the retrenchment of the workman as contemplated U/s 25F of ID Act, 1947.

10. The learned Counsel for the management argued that the worker in this case is only a casual employee on daily wages and hence she is not entitled to claim the benefits U/s 25F of the ID Act. The learned Counsel for the worker relied on the decision of Hon'ble High Court of Kerala in **Sreekumar K. Vs Managing Director, KTDC Ltd**, 2019 (1) KHC 225 to point out that the definition in Sec 2(s) of the ID Act includes casual employees also. In the above case the Hon'ble High Court held that;

“ Para 18. From this it is quiet evident that the definition of the term ‘workman’ U/s 2(s) of the ID Act includes a casual employee as well and hence the decision cited (Supra) (in the context governed by the provisions of the workman’s Compensation Act) is not at all attracted to the case in hand.”

11. The learned Counsel for the management relied on the decision of the Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, 2006 4 SCC 1 and the **State of Bihar and others Vs Devendra Sharma**, Civil Appeal no. 7879/2019, to argue that the management Bank being a ‘state’ under Article 12 of the Constitution, no back door entry in service can be allowed violating Article 14 & 16 of the Constitution of India. The learned Counsel for the worker on the other hand relied on various decisions and argued that when there is a violation of the provisions of ID Act, the dictum laid down in the above decisions is clearly distinguishable. In **Ajaypal Singh Vs Haryana Warehousing Corporation**, (2015) 6 Supreme Court Cases 321 the Hon'ble Supreme Court considered the decision in **Uma Devi's** case (Supra) and held that ;

“17. In **Uma Devi's** case, (3) this Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since rule of law is a core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The provisions of the Industrial Disputes Act and powers of the Industrial and Labour Court provided therein were not at all under consideration in **Uma Devi's** case (3). The issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in **Uma Devi's** case.

18. We have noticed that Industrial Dispute Act is made for the settlement of industrial disputes and certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for long period without giving them the status and privilege of permanent employees.

19. Sec 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provisions if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is given one month 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 apart from compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Govt or such Authority as may be specified by appropriate Govt by notification in the official Gazette. If any part of the provisions of Sec 25F is violated and the employer there by, resorts to unfair trade practice with the object to deprive the workman with privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 & 16 of the Constitution of India.

(20) - - - - -

(21) - - - - -

Para 22. It is always open to the employer to issue an order of “retrenchment” on the ground that the initial appointment of the workman was not in conformity with Article 14 & 16 of the Constitution of India or in accordance with rules. Even for retrenchment for such ground, unfair labour practice cannot be resorted to and thereby the workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Sec 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year”.

The above decisions was also quoted with approval by the Hon’ble Supreme Court in **Durgapur Casual Workers Union and others Vs Food Corporation of India and others**, (2015) 5 SCC 786. The Hon’ble Court held that an undertaking of the government which comes within the meaning of ‘industry’ or its establishment cannot justify its illegal action including unfair labour practice nor can ask for different treatment on the ground that public undertaking is guided by Articles 14 & 16 of Constitution of India and the private industries are not guided by 14 & 16 of the Constitution. In **Umralla Grama Panchayat Vs Secretary, Municipal Employees Union**, 2015 12 SCC 775 the Hon’ble Supreme Court directed that the services of the workmen in that case be regularized and made permanent since they worked for more than 240 days in a calendar year.

12. In view of the above, it is very clear that the management terminated the service of the worker in clear violation of the provisions of Sec 25F of the Industrial Disputes Act.

13. The workman also pleaded that he was terminated from the service of the management Bank in violation on Sec 25G of ID Act on the ground that the employees much junior in service to him were retained in service when he was terminated from the service of the management. The workman did not lead any evidence to substantiate and support violation of Sec 25G of the ID Act. The workman also alleged that the management appointed fresh hands against the post held by him for doing same jobs which he was doing. Having retrenched him from the service of the management the workman has a right to be offered re-employment against any future vacancy in preference over others. In Exbt.W2 letter dt.08.02.2012 written by the management Bank to the Assistant Labour Commissioner(C), it was very clearly pointed out that “ His services were not required after 16.08.2011 after a regular substaff was posted at the said branch”. From the above it is very clear that there was a sanctioned post of Peon and the services of the workman was terminated to accommodate a regular substaff. This will clearly show that the management appointed a new substaff in the place of workman in violation of Sec 25H of ID Act. The workman also claimed that the management violated Sec 25T of the ID Act while resorting to the unfair labour practice of employing the workman as casual worker and continued his service for years together with the object of depriving him the status and privilege of a permanent workman. As per Sec 2(r)(a) ‘unfair labour practice’ means any practice specified in the 5th Schedule of the Act. In the 5th Schedule I(x) “the action of the management to employ workman as badali’s, casuals or temporary and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workman”, is classified as an unfair labour practice, on the side of the management. In this particular case, it is seen that the workman was engaged as a casual temporary Peon on 22.01.2009 and he continued till 16.08.2011 as a temporary Peon and his services were terminated when a regular substaff joined the service of the

management Bank at Muvattupuzha branch. Hence it is very clear that there was a regular post of Peon against which the workman was appointed on temporary basis and he continued his service with the Bank for more than 2 years drawing daily wages. It is a fact that he was denied the facility of a regular Peon when another person was appointed in his place to do the same work what the workman was doing at Muvattupuzha branch of the management bank. This is a clear case of unfair labour practice.

14. Considering all the above facts, pleadings and evidence in this case, I am inclined to hold that the termination of the workman from the service of the management Bank is abinitio, void and is in violation of Sec 25F of ID Act, 1947. Since the management failed to implement the mandate of Sec 25H, they violated the provisions of Sec 25H of ID Act. Further retaining the workman as a daily wage employee for more than two year and denying him the benefits of regular employees is an unfair labour practice in violation of Sec 25T of ID Act, 1947.

15. **Issue No. 3**

Issue nos.1 & 2 regarding the legality of termination of the workman was decided in favour of the workman and against the management. The learned Counsel for the workman argued that once this Tribunal found that the termination of the workman was illegal, he is entitled for reinstatement in service with full back wages. The learned Counsel for the management argued that in the special circumstances of this case, it may not be ideal to order reinstatement with full back wages and he argued that it is ideal to provide monetary compensation in the place of reinstatement. Relying on the decision of **State of Uttarakhand and others Vs Rajkumar**, 2019 1 LLJ 513 SC the learned Counsel for the management argued that the workman was a daily wages employee and he continued as a daily wage employee and is not entitled for regularization considering the spirit of the decision of Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, (Supra). The Hon'ble Supreme Court in the above referred case relying on the decision of **BSNL Vs Bhurumal**, (2014) 7 SCC 177 and **District Development Officer and another Vs Satish Kantilal Amerelia** 2018 12 SCC 298 held that in the circumstances of that case it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim of reinstatement and other consequential benefits. The Hon'ble Supreme Court has laid down the law on the subject in BSNL case (Supra) as follows;

“ Para 33. It is clear from the readings of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workmen are terminated illegally and/or malafide and/or by way of victimization, of unfair labour practice, etc. However when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Sec 25F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

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

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

The learned Counsel for the workman on the other hand relied on the decisions of the Hon'ble Supreme Court in **Jasmar Singh Vs State of Haryana and other**, 2015 4 SCC 458 and argued that the worker is

entitled for reinstatement with full back wages since the order of termination was void abinitio. The Hon'ble Supreme Court in the above case relied on the following observation of the court in **Deepali Gundu Surwase Vs Kranti Junior Adyapak Mahavidyalaya**, 2013 10 SCC 324 to hold that when the termination is found to be illegal, the workman is entitled for reinstatement with back wages.

“ Para 22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from relatives and other acquaintance to avoid starvation. These sufferings continued till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultravires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer was to deny back wages to the employee, or contesting his entitlement to get consequential benefits then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments”.

In the above case, the Hon'ble Supreme Court was considering the case of a workman working as a daily paid worker in the office of Sub Divisional Officer (Karnal) for more than 240 days.

In the present case, it is true that the workman was engaged as a daily wage employee and he worked continuously for more than 240 days, one year before his termination and it is also found that his continued employment for prolonged time as a daily wage workman was an unfair labour practice U/s 25T, as he was engaged as a casual employee for years together with the object of depriving him of the status and privilege of permanent workman. The management failed to establish that the workman was gainfully engaged during the period of termination. Hence it is not a simple case where the procedure contemplated U/s 25F of ID Act is violated.

Considering all the facts, evidence and pleadings, I am inclined to hold that the workman is entitled for reinstatement in the service of the management Bank with full back wages, continuity of service and other consequential benefits.

Hence an award is passed holding that the termination of the workman from the services of the management Bank from 16.08.2011 is illegal, unjust and abinitio void. He is entitled to be reinstated in service of the Management Bank with full back wages, continuity of service and all other attended benefits.

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

Dictated to the Personal Assistant, transcribed and passed by me on this the 24th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

- WW1 - Shri. Sudhish U. R., dt.13.01.2016
WW2 - Shri.V. N. Krishnan , dt.10.05.2016

Witness for the Management:-

- MW1 - Shri.Babu Sebastian, dt. 09.06.2017
MW2 - Shri. Ziyad Rahuman M. dt. 30.04.2019

Exhibits for the Workman:-

- W1 - Original notice no.7/01/2012/D1 dt.17.01.2012 issued by the Asst.Labour Commissioner(C), Ernakulam

- W2 - True copy of the letter dt. 08.02.2012 by management Bank to the Asst.Labour Commissioner (C), Ernakulam
- W3 - Office copy of the reply representation dt.20.03.2012 submitted by workman to the Asst.Labour Commissioner(C), Ernakulam
- W4 - True copy of the letter dt.09.05.2012 addressed by management Bank to the Asst.Labour Commissioner(C), Ernakulam
- W5 - Office copy of the reply representation dt.10.07.2012 submitted by workman to the Asst.Labour Commissioner(C), Ernakulam
- W6 - Copy of the Report Failure of Conciliation proceedings dt.16.10.2012 of the Asst.Labour Commissioner(C), Ernakulam
- W7 - True copy of SB account passbook – A/c no.31140100000842 maintained by the workman with the Muvattupuzha branch of the management bank for the period from 16.06.2010 to 15.11.2012
- W8 - True copy of letter dt.04.03.2013 issued by the Dy.General Manager, Bank of Baroda, Zonal Office, Chennai
- W9 - True copy of Tripartite Settlement dt.18.03.2008 between Bank of Baroda and All India Bank of Baroda Employees' Federation
- W10 - True copy of Settlement dt.25.11.2013 between the management of Union Bank of India and the All India Bank of Union Bank of India Employees' Association
- W11 - True copy of Memorandum of Settlement dt.25.06.2013 between the management of Bank of India and Federation of Bank of India Staff Unions
- W12 - True copy of letter dt.09.04.2013 of Asst.General Manager, State Bank of Travancore, Head Office, Trivandrum enclosing a Memorandum of Settlement dt.21.10.2011 between the management of SBT and SBT Employees Union
- W13 - True copy of Memorandum of Settlement dt.30.08.2014 between the management of Canara Bank and Canara Bank Employees Union
- W14 - True copy of DBOD.CORIA No.15968/04.03.001.2013/13 dt.09.05.2013 issued by Reserve Bank of India
- W15 - True copy of letter dt.27.02.2013 issued by the Dy. Manager, Bank of Baroda, Corporate Center, Mumbai

Exhibits for the Management:-

- M1 - True copy of the HR Resourcing Policy of the management Bank
- M2 - True copy of the statement of account No.31140100000842 maintained at Muvattupuzha branch from 29.04.2009 to 08.11.2012
- M3 - True copy of the Ledger account statement of Sundry charges account no.31140054511004 of Muvattupuzha branch from 26.11.2007 to 29.10.2011
- M4 - True copy of the available Debit vouchers relating to wages paid from 22.01.2009 to 16.08.2011
- M5 - True copy of the Form C Bonus paid for the year 2010-11
- M6 - True copy of the Form C Bonus paid for the year 2011-12.

नई दिल्ली, 29 अक्टूबर, 2020

का. आ. 992.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोचीन के पंचाट (संदर्भ सं. 10/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.10.2020 को प्राप्त हुआ था।

[सं. एल-12012/41/2012-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 29th October, 2020

S.O. 992.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ERNAKULAM, Cochin as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 29.10.2020.

[No. L-12012/41/2012-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT,
ERNAKULAM**

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer.
(Monday the 24th day of February 2020, 5 Phalguna 1941)

ID No. 10/2013

Workman : Smt.SeenathBabu
Kottayil House
Nellithanam
Karur P.O., Palai
Kottayam - 685584
By Adv.Ashok B. Shenoy
M/s. ANP Associates

Management : The Regional Manager
Bank of Baroda
Regional Office, Vasudeva Building
T. D. Road
Ernakulam –682011
By M/s. B. S. Krishnan Associates

This case coming up for final hearing on 09.01.2020 and this Tribunal-cum-Labour Court on 24.02.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12012/41/2012-IR(B-II) dated 27.12.2012 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the action of the Management of Bank of Baroda in terminating the services of Smt.Seenath Babu, Ex-sweeper-cum-Peon of Bank of Baroda, Palai branch w.e.f. 21.10.2011 was in accordance with the provisions of Section 25F of the Industrial Disputes Act, 1947 and justified ? What relief the concerned workman is entitled to ? ”

3. The worker was employed in the subordinate cadre as a sub staff in the services of the management Bank at their Palai branch in Kottayam district. She was initially employed in the service of the Palai branch since it opened on 10.09.2009. Thereafter she was employed continuously and regularly against a permanent vacancy to do regular and permanent nature of duties. She had been discharging all the duties entrusted to her diligently, honestly and without any complaints. On 21.10.2011, the services of the worker was orally terminated by the Manager of the Palai branch of the management Bank. The worker raised an industrial dispute against the management Bank challenging the termination of her service before the Assistant Labour Commissioner(Central) on 23.10.2011. The conciliation proceedings ended in failure. The termination of the services of the worker resorted to by the management amounts to retrenchment. The worker was employed for 149 days continuously on part time basis and for 298 days on full time basis continuously from 10.09.2009 to 21.10.2011. Though the worker was employed continuously from 10.9.2009 to 21.10.2011 she was retrenched

from the services of the Bank without any notice of retrenchment or wages in lieu of such notice as mandated by Sec 25F of the ID Act, 1947. The management did not pay any retrenchment compensation as mandated in Sec 25F of ID Act, 1947. Retrenchment of worker's service is therefore illegal, unjust and also null and void. It is also illegal, unjust and void for violation of provisions of Para 522, 523 and 524 of Sastri Award. Employees much junior in service to the worker are retained in service by the management. This is in violation of mandatory provisions of Sec 25G of the ID Act, 1947 and Para 507 of Sastri Award. The management employed fresh and new hands in service of the management against the very same work for which the worker was employed. This is in violation of Sec 25H of ID Act, 1947 and Clause 20.12 of 1st Bipartite Settlement dt.19.10.1966 and Para 493 of Sastri Award. Hence the termination of the worker is illegal and is stained by malafide and victimization. The worker was treated by the management as temporary worker against permanent vacancy just to deprive her off the status and privilege of a permanent workman. By adopting this practice, the management was indulging in unfair labour practice prohibited U/s 25T of ID Act, 1947 and Para 495 and 522 of Sastri Award. In terms of Clause 20.12 of the 1st Bipartite Settlement dt.19.10.1966 the management is bound to retain and absorb the worker in regular service especially when the vacancy against which she was employed is permanent and continues to exist. Since retrenchment, the worker is without any job and income. Hence the worker pleaded that the action of the management in terminating her services w.e.f. 21.10.2011 be declared illegal and unjust and also declare that she be reinstated in service of the management with full back wages, continuity of service and other attended benefits.

4. The management filed written statement denying the above allegations. According to the management, the above application and the adjudication here on are not maintainable under law. The worker was neither employed in the bank nor any letter of appointment was issued to her and therefore there is no question of termination of her service.

5. The management is a nationalized public sector Bank with prescribed rules and policies in the matter of recruitment into its regular service. For appointment in the subordinate cadre, recruitment is made through notification to Employment Exchange and after complying with the formalities of test and interview. The instructions and guidelines of Govt of India and Reserve Bank of India in the matter of reservation are also strictly followed in the matter of recruitment. The competent authority for sanctioning of regular post in the subordinate staff cadre in the management Bank is General Manager (HRM) and the appointing authority is the Regional Head. The Branch Managers can neither sanction nor appoint staff in the subordinate cadre in the management Bank. The worker in this dispute was not appointed in the management Bank by the competent authority. She was not engaged against a regular vacancy in any branch of the Bank. She was not appointed an employee of the management Bank. There is no employer-employee relationship between the worker and the management. The worker was intermittently engaged as daily wager on casual/temporary basis at the Palai branch of the management Bank during 10.09.2009 to 21.10.2011. She was being paid appropriate wages on daily basis. She was not engaged 240 days at any point of time. She was not engaged against a sanctioned post in the management Bank. The worker was not subjected to any recruitment process by the management Bank and no appointment letter was given to her. The worker was engaged by Branch Manager who is not the appointing authority or the sanctioning authority in the management Bank. Temporary and casual engagements on day to day basis will not create any right of employment in the management Bank. The worker was engaged intermittently as daily wager from 10.09.2009 to 21.10.2011 as sweeper cum peon. Her engagement for 240 days or above alone will not entitle her to claim reinstatement or regularization in the service of the Bank. Her engagement was by Branch Manager who is not the competent appointing authority for subordinate staff in the management Bank. The management is a public sector Bank and is a "State" under Article 12 of the Constitution of India. Appointment to any post in the management is made only after complying with the statutory rules, regulations and directions issued by Govt of India from time to time. The appointment in the subordinate staff cadre is to be made by the competent authority only against sanctioned vacancies and also subject to fulfillment of eligibility criteria for such appointment. The appointment to the subordinate cadre can be done only through Employment Exchange. If suitable candidates are not available with Employment Exchange, the management can explore other sources of recruitment. The worker in this case was never sponsored by Employment Exchange and not subject to any recruitment procedure. The action of the management in dis-engaging the service of the worker is proper, legal and valid and there is no violation of the provisions of the ID Act or the provisions of the Sastri Award. It is baseless and incorrect to allege that the management has violated Sec 25F, 25G and 25H of the ID Act and the provisions of Bipartite Settlement and Sastri Award. It is baseless and incorrect to allege that the management is in the habit of employing workman against permanent vacancies one after another and to retrench them to be replaced by new hands. The management denied any unfair labour practice or violation of provisions of ID Act, Bipartite Settlement and Sastri Award. Constitution of India envisages right of equality and equal opportunity in the matter of public employment under Article 14 and 16 of the Constitution. There is no fundamental right in those who have been employed on daily wages or on contractual basis to claim regularization and absorption in the regular service.

6. The worker filed replication denying the allegations in the written statement filed by the management. The management Bank employed the workman on 10.09.2009 against a permanent vacancy of Sweeper-cum-peon when the branch of the management Bank was opened. No permanent hand was posted thereafter till 21.10.2011 and the worker was employed continuously and regularly and was discharging the duties of regular and permanent nature. The worker was entrusted with duties of a substaff and was under supervision of the branch authorities and had access to all areas in the premises of the branch including security areas. She had been paid wages against voucher slips duly authorised by branch authorities and accounted against Bank's Profit & Loss account. The worker was also paid bonus upto 21.10.2011 when her services were abruptly terminated without notice. The engagement of the worker by the Bank was continuous without break and even Sundays were considered as a paid holiday as is available to every permanent employees. The management Bank is having 85 branches and 2 Administrative Offices in Kerala and the permanent employees working in the state in the subordinate cadre is only 90. There are considerable number of temporary sub staff entrusted with duties of permanent nature. The management had regularized 37 temporary sub staff entrusted with duties of permanent nature during the years 2009-10 and 2011. As many as 1966 officers were recruited through campus selection and the averment of the management that the recruitments are done only through proper notification and selection process is only to justify the denial of employment to the worker. After retrenchment of the worker w.e.f. 21.10.2011, a new temporary employee was engaged by the management in Palai branch without affording the worker an opportunity for re-employment. Sponsorship by Employment Exchange is not a condition precedent for employment in the post and job against which the worker herein was employed in the management Bank. Permanent employment is denied to the worker by the management Bank only to deny her the benefits available to permanent employees.

7. After completion of the pleadings, the worker examined herself as WW1 and marked Exbts.W1 to W6. The worker also examined WW2 and marked documents W7 to W14 through him. Exbt.W9, W10, W11, W12 were marked subject to proof. Management examined MW1 and MW2 and marked M1 to M8 and Exbt.W15.

8. On the basis of the pleadings and reference, the issues to be decided are;

1. Whether the action of the management in terminating the services of the worker w.e.f. 21.10.2011 was in accordance with provisions of Sec 25F of the ID Act?

2. Whether the management violated any other provisions of ID Act, Bipartite settlement or Sastri Award while terminating the service of the workman ?

3. Relief and cost ?

9. Issue nos.1 & 2

According to the worker, she was engaged by the management Bank on 10.09.2009 when the Palai branch of the management Bank commenced its operation. She was engaged as a sweeper cum peon and continued to be employed till 20.10.2011 continuously and regularly against a regular and permanent vacancy and was doing regular and permanent nature of duties. On 21.10.2011 her services are orally terminated by Branch Manager. According to the learned Counsel for the worker, the oral termination of the worker amounts to retrenchment. However she was not issued any notice of retrenchment nor wages in lieu of notice mandated U/s 25F of ID Act, 1947. Retrenchment of worker's service is therefore illegal, unjust null and void in law. It is also in violation of Paras 522, 523 and 524 of Sastri Award. According to the learned Counsel for the management, the worker was never employed by the management Bank and intermittently used her service between 10.09.2009 to 21.10.2011 and she was paid daily wages for the services rendered by her. Her engagement was only temporary/casual on a day to day basis and the worker has no right of employment in the management Bank. The management Bank is a nationalized Bank and therefore follows prescribed rules and procedures for appointment in its regular service. For appointment in the subordinate staff cadre, recruitment is made through notification in the Employment Exchange and after complying with the formalities of test and interview. The worker was not given any appointment order and therefore there was no retrenchment of the worker by the management Bank. According to the learned Counsel for the worker the policies and procedures relied on by the management are for the regular recruitment and the worker has no claim for regularization. With regard to the policies also the worker through WW2 established that the management Bank resorted to regularization of temporary and casual subordinate staff on the basis of settlement between the union and the management. It is also pointed out that as per Exbt.W8 that there is a Bipartite Settlement between the management Bank and All India Bank of Baroda Employees Federation for absorption of casual/ temporary peons/sweepers in 3 phases. As per Exbt.W8, it is pointed out that 37 temporary subordinate employees were appointed as permanent employees in Kerala branches from 2008-2011. The management relied on Exbt.M1 to point out that the HR resourcing policy covers the appointment of subordinate staff also. According to the learned Counsel for the management, General Manager(HRM) is the competent authority to sanction the post of substaff in various zones. However

the learned Counsel for the worker pointed out that the specific guidelines and criteria for recruitment in subordinate staff cadre forms part of Exbt.M1 as Annexure 1, which is not enclosed along with Exbt.M1. Further it is also seen that at Para 7.0 of Exbt.M1 that there is a provision for engagement of sub staff on temporary basis. This provision authorized engagement of temporary sub staff for a limited period not exceeding 90 days by the branches in rural and semi urban centers. Such temporary engagement also requires the approval of General Manager(HRM). According to MW1, Palai branch of the management Bank is considered as a semi urban branch. It has also come out in evidence that they were not having any regular sweepers till 21.10.2011 from 10.09.2009 when the branch operations started. MW1 did not deny the fact that there was a sanctioned post of sweeper when the Palai branch of the management Bank was opened on 10.09.2009. Further he admitted that the worker was being engaged as a sweeper from 10.09.2009. It is admitted by MW1 that the accounts of the Palai branch was audited every year and the payment of wages to the worker was being done through Profit & Loss account/Sundry charges through vouchers. The auditors never pointed out any irregularity in the wages paid to the worker and no action was also taken against the Manager who made such appointment and payment. Hence it is very clear that the engagement of the worker had the approval of the competent authority and the payments made to her were fully authorized.

10. The above discussion will clearly show that the worker was engaged by the management Bank against a regular vacancy. Having found that the worker was engaged by management Bank against a regular vacancy, the further issue to be decided is whether her oral termination w.e.f. 21.10.2011 is in violation of the provisions of Sec 25F of the ID Act, 1947. The worker filed an IA seeking production of certain crucial documents to substantiate her claim that she worked with the management Bank continuously for more than 240 days, one year immediately prior to her retrenchment. The worker requested for production of the following documents.

1. Statement of Account no. 33020100000296 maintained at Palai branch of the management Bank in the name of the petitioner/worker for the period from 10.09.2009 to 31.12.2012
2. Ledger Account statement of Sundry charges - Others - A/c no. 33020054511004 maintained at Palai branch of the management Bank for the period from 10.09.2009 to 31.12.2011
3. Debit vouchers relating to wages paid to temporary employees to the debit of A/c no. 33020054511004 held in custody at the Palai branch of the management Bank for the period 12.09.2009 to 31.12.2011
4. Statement of account - Bonus paid A/c no.33020052431001 maintained at Palai branch of the management Bank for the period 10.09.2009 to 31.12.2012
5. Debit vouchers relating to bonus paid to temporary employees to the debit of A/c no. 33020052431001 for the financial years 01.04.2009 to 31.03.2010, 01.04.2010 to 31.03.2011 and 01.04.2011 to 31.03.2012.
6. Copy of Return of Bonus paid to employees on Form D (Rule 5) submitted by the Palai branch of management Bank to the authority under Bonus Act, 1965 for the financial years 01.04.2009 to 31.03.2010, 01.04.2010 to 31.03.2011 and 01.04.2011 to 31.03.2012.
7. Copy of Bonus paid to employees on Form-C (Rule 4 (c)) submitted to the Controlling Authority under Payment of Bonus Act, 1965 to the Palai branch of management Bank for the financial years 01.04.2009 to 31.03.2010, 01.04.2010 to 31.03.2011 and 01.04.2011 to 31.03.2012.
8. Copy of E-mail circular dt.19.02.2013 issued by HRM Department of respondent Bank to all their branches in Kerala Region, directing payment to all temporary subordinate staff employees pro-rata wages at the first stage of basic pay as applicable to subordinate staff with all allowance thereon.

The management produced the following documents.

1. True copy of the statement A/c no.33020100000296 maintained by the worker at Palai branch from 24.01.2010 to 31.12.2012. This document is marked as Exbt.M6 in this proceedings.
2. True copy of the Ledger Account statement of Sundry charges A/c no.33020054511004 of Palai branch from 10.09.2009 to 31.12.2012. This document is marked as Exbt.M4 in this proceedings
3. True copy of available debit vouchers relating to wages paid to temporary employees from 10.10.2009 to 31.12.2012. This document is marked as Exbt.M3 series in this proceedings.
4. True copy of the statement of bonus A/c no.33020052431001 maintained at Palai branch from 10.09.2009 to 31.12.2012. This document is marked as Exbt.M7.

5. True copy of the debit vouchers relating to bonus paid to temporary employees to the debit A/c no.33020052431001 for the financial year 2009-10 and 2010-11.
6. Copy of return of bonus paid to employees on Form –C and D submitted by the branch for the financial year 2010-11 and 2011-12. This document is marked as Exbt.M5.
7. Copy of the E-mail circular dt.19.02.2013 issued by HRM Department of the respondent regarding the pro-rata wages payable to temporary subordinate staff and the allowances thereon. This document is marked as Exbt.M2 in this proceedings.

According to the learned Counsel for the worker, Exbt.M3 debit vouchers, Exbt.M4 the Ledger account statements of Sundry charge accounts and Exbt.M5, the Form-C return of bonus paid to employees are very crucial in establishing that the worker worked for more than 240 days one year immediately prior to her oral termination. Exbt.M3 debit vouchers with regard to the payments made to the worker from her date of joining till the date of her oral termination is very crucial since it will show the number of days that she worked with the management Bank in each year. The corresponding Ledger entries will be available in Exbt.M4, Ledger account statement of Sundry charges. The management also failed to produce Form-C return of bonus paid for the period from 2009-2012 which will clearly show the number of days a worker worked with the management Bank. The Form-C register produced by the management for the year 2010-11 clearly shows that the worker worked for 350 days and she was paid an amount of Rs.7668/- towards bonus during that year. The Exbt.M3 series of debit vouchers produced by the management will show the number of days worked by the worker against which the payments were released. Had the management produced the complete set of debit vouchers it is possible to arrive at the exact number of days that the worker worked during the relevant point of time. However it is possible to arrive at the number of days that she worked with the management Bank on the basis of the Ledger account statement of Sundry charges i.e., Exbt.M4 and the available debit vouchers. Having failed to produce these crucial documents the learned Counsel submitted that an adverse presumption will have to be drawn against the management. The learned Counsel relied on the decision of **Gauri Shankar Vs State of Rajasthan**, 2015 12 SCC 754. In the above case, the workman was working with the respondent and his case was that he was appointed against a permanent and sanctioned post w.e.f. 01.01.1987 till his services came to be retrenched and he had rendered service of more than 240 days in every calendar year and has received salary from the respondent department each month. The workman challenged the retrenchment as bad in law as the same is in violation of Sec 25F, 25G, 25H, 25T and 25U of the ID Act. The workman applied for production of the Muster Roll and the management failed to produce the relevant Muster Rolls. The Hon'ble Supreme Court relying on its earlier decisions in **Gopal Krishna G Ketker Vs Muhammed Haji Latheef**, AIR 1968 SC 1413 and **Murukesam Pillai Vs Manikyavasaka Pandara**, 1917 5 LW 759 held that even if the burden of proof does lie on a party, the Court can draw an adverse inference if he withholds important documents in his possession which can throw light on the facts of issue. The learned Counsel for the workman also relied on the decision of the Hon'ble Supreme Court in **Sriram Industrial Enterprises Ltd Vs Mahak Singh and others**, 2007 4 SCC 94, wherein the Hon'ble Supreme Court held that when the workman discharged their initial onus by producing the documents in their possession it is the responsibility of the management to disprove the claim of the workman that he did not work for more than 240 days with the management one year immediately prior to his/her termination. In this particular case the debit vouchers for payment to the worker is a crucial document in the custody of the management to substantiate her claim of working for more than 240 days in a year immediately before her retrenchment. MW1 in his cross examination clearly stated that the vouchers are stitched on a daily basis and kept in safe custody. The management has not offered any explanation for non production of such a crucial document. Hence an adverse presumption can be drawn that the worker worked continuously for 240 days immediately prior to her retrenchment. Further the true copy of the Ledger A/c statement of Sundry charges of Palai branch from 10.09.2009 to 31.12.2012 would show the details of payment of wages made to the worker during the said period. On a detailed analysis of the payments made to the worker as reflected in the Ledger statement of Sundry charges, it can be seen that the worker worked for more than 300 days from 19.10.2010 to 20.10.2011, one year immediately prior to her retrenchment. The Bank account of the worker however does not reflect all those payments made to her as per the Ledger account statement of Sundry charges. It is also seen from the true copy of Form-C bonus paid in the year 2010-11 that the worker worked for 350 days during the year 2010-11 and she was paid a bonus of Rs.7668/-. Also it is seen that a bonus of Rs.4020/- was paid to her for the year 2009-10. The worker through these documents proved that she worked for more than 240 days during one year immediately before her termination. Hence the management is liable to follow the conditions precedent before the retrenchment of the worker, contemplated under Sec 25F of the ID Act, 1947 before termination of her service.

11. The learned Counsel for the management argued that the worker in this case is only a casual employee on daily wages and hence she is not entitled to claim the benefits U/s 25F of the ID Act. The learned Counsel for

the worker relied on the decision of Hon'ble High Court of Kerala in **Sreekumar K. Vs Managing Director, KTDC Ltd**, 2019 (1) KHC 225 to point out that the definition in Sec 2(s) of the ID Act includes casual employees also. In the above case the Hon'ble High Court held that;

“Para 18. From this it is quiet evident that the definition of the term ‘workman’ U/s 2(s) of the ID Act includes a casual employee as well and hence the decision cited (Supra) (in the context governed by the provisions of the workman’s Compensation Act) is not at all attracted to the case in hand.”

12. The learned Counsel for the management relied on the decision of the Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, 2006 4 SCC 1 and the **State of Bihar and others Vs Devendra Sharma**, Civil Appeal no. 7879/2019, to argue that the management Bank being a ‘state’ under Article 12 of the Constitution, no back door entry in service can be allowed violating Article 14 & 16 of the Constitution of India. The learned Counsel for the worker on the other hand relied on various decisions and argued that when there is a violation of the provisions of ID Act, the dictum laid down in the above decisions is clearly distinguishable. In **Ajaypal Singh Vs Haryana Warehousing Corporation**, (2015) 6 Supreme Court Cases 321 the Hon'ble Supreme Court considered the decision in **Uma Devi's** case (Supra) and held that ;

“17. In Uma Devi's case, (3) this Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since rule of law is a core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The provisions of the Industrial Disputes Act and powers of the Industrial and Labour Court provided therein were not at all under consideration in **Uma Devi's** case (3). The issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in **Uma Devi's** case.

18. We have noticed that Industrial Dispute Act is made for the settlement of industrial disputes and certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for long period without giving them the status and privilege of permanent employees.

19. Sec 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent for retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provisions if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is given one month 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 apart from compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Govt or such Authority as may be specified by appropriate Govt by notification in the official Gazette. If any part of the provisions of Sec 25F is violated and the employer there by, resorts to unfair trade practice with the object to deprive the workman with privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 & 16 of the Constitution of India.

(20) - - - - -

(21) - - - - -

Para 22. It is always open to the employer to issue an order of “retrenchment” on the ground that the initial appointment of the workman was not in conformity with Article 14 & 16 of the Constitution of India or in accordance with rules. Even for retrenchment for such ground, unfair labour practice cannot be resorted to and thereby the workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Sec 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year”.

The above decisions was also quoted with approval by the Hon'ble Supreme Court in **Durgapur Casual Workers Union and others Vs Food Corporation of India and others**, (2015) 5 SCC 786. The Hon'ble Court held that an undertaking of the government which comes within the meaning of ‘industry’ or its establishment cannot justify its illegal action including unfair labour practice nor can ask for different treatment on the ground that public undertaking is guided by Articles 14 & 16 of Constitution of India and the private industries are not guided by 14 & 16 of the Constitution. In **Umrula Grama Panchayat Vs Secretary, Municipal Employees Union**, 2015 12 SCC 775 the Hon'ble Supreme Court directed that the services of the

workmen in that case be regularized and made permanent since they worked for more than 240 days in a calendar year.

13. In view of the above, it is very clear that the management terminated the service of the worker in clear violation of the provisions of Sec 25F of the Industrial Disputes Act.

14. The worker also pleaded that she was terminated from the service of the management in violation of Sec 25G of the ID Act, on the ground that the employees much junior in service to her were retained in service when she was terminated from the service of the establishment. The worker did not lead any evidence to substantiate and support violation of Sec 25G of the ID Act. The worker also alleged that the management appointed fresh hands against the post held by her for doing the same job which she was doing. Having retrenched her from service of the management the worker has a right to be offered re-employment against any future vacancy in preference over others. Since the management failed to implement the mandate of Sec 25H, they violated the provisions of Sec 25H of ID Act. It is seen from evidence of MW1 that the worker worked as Sweeper-cum-Peon in Palai branch till October 2011 till a permanent sweeper joined the service of the management Bank at Palai. This clearly shows that the management appointed a new sweeper in the place of worker in violation of provisions of 25H of ID Act. The worker also claimed that the management violated Sec 25T of the ID Act by resorting to the unfair labour practice of employing the worker as casual worker and continued her service for years together with the object of depriving her the status and privilege of a permanent worker. As per Sec 2(r)(a), "unfair labour practice" means any practice specified in the 5th Schedule of the Act. In the 5th Schedule I(x) "the action of the management to employ workman as badali's, casuals or temporary and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workman", is classified as an unfair labour practice, on the side of the management. In this particular case, it is seen that the worker was appointed as a casual sweeper on 10.09.2009 and she continued till 21.10.2011 as a casual sweeper and her services were terminated when a regular sweeper joined the service of the management Bank at Palai branch. Hence it is very clear that there was a post of Sweeper against which the worker was appointed on casual basis and she continued her service with Bank for almost 2 years drawing daily wages. It is a fact that she is denied the facility of a regular sweeper when another person is appointed in her place to do the same work what the worker was doing in the Palai branch of the management Bank. This is a clear case of unfair labour practice.

15. Considering all the above facts, pleadings and evidence in this case, I am inclined to hold that the retrenchment of the worker from the services of the management Bank is abinitio void and is in violation of Sec 25F of ID Act, 1947 and retaining her as a daily wage employee for almost 2 years and denying her the benefits of regular employees is an unfair labour practice in violation of Sec 25T of ID Act.

16. Issue No. 3

Issue nos.1 & 2 regarding the legality of termination of the worker was decided in favour of the worker and against the management. The learned Counsel for the worker argued that once this Tribunal found that the termination of the worker was illegal, she is entitled for reinstatement in service with full back wages. The learned Counsel for the management argued that in the special circumstances of this case, it may not be ideal to order reinstatement with full back wages and he argued that it is ideal to provide monetary compensation in the place of reinstatement. Relying on the decision of **State of Uttarakhand and others Vs Rajkumar**, 2019 1 LLJ 513 SC the learned Counsel for the management argued that the worker was a daily wages employee and she continued as a daily wage employee and is not entitled for regularization considering the spirit of the decision of Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi**, (Supra). The Hon'ble Supreme Court in the above referred case relying on the decision of **BSNL Vs Bhurumal**, (2014) 7 SCC 177 and **District Development Officer and another Vs Satish Kantilal Amerelia** 2018 12 SCC 298 held that in the circumstances of that case it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim of reinstatement and other consequential benefits. The Hon'ble Supreme Court has laid down the law on the subject in BSNL case (Supra) as follows;

"Para 33. It is clear from the readings of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workmen are terminated illegally and/or malafide and/or by way of victimization, of unfair labour practice, etc. However when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Sec 25F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

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

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

The learned Counsel for the worker on the other hand relied on the decisions of the Hon’ble Supreme Court in **Jasmar Singh Vs State of Haryana and other**, 2015 4 SCC 458 and argued that the worker is entitled for reinstatement with full back wages since the order of termination was void abinitio. The Hon’ble Supreme Court in the above case relied on the following observation of the court in **Deepali Gundu Surwase Vs Kranti Junior Adyapak Mahavidyalaya**, 2013 10 SCC 324 to hold that when the termination is found to be illegal, the workman is entitled for reinstatement with back wages.

“ Para 22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter’s source of income gets dried up. Not only the employee concerned but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from relatives and other acquaintance to avoid starvation. These sufferings continued till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultravires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer was to deny back wages to the employee, or contesting his entitlement to get consequential benefits then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments”.

In the above case, the Hon’ble Supreme Court was considering the case of a workman working as a daily paid worker in the office of Sub Divisional Officer (Karnal) for more than 240 days.

In the present case, it is true that the workman was engaged as a daily wage employee and she worked continuously for more than 240 days, one year before her termination and it is also found that her continued employment for prolonged time as a daily wage worker was an unfair labour practice U/s 25T, as she was engaged as a casual employee for years together with the object of depriving her of the status and privilege of permanent workman. The management failed to establish that the worker was gainfully engaged during the period of termination. Hence it is not a simple case where the procedure contemplated U/s 25F of ID Act is violated.

Considering all the facts, evidence and pleadings, I am inclined to hold that the worker is entitled for reinstatement in the service of the management Bank with full back wages, continuity of service and other consequential benefits.

Hence an award is passed holding that the termination of the worker from the services of the management Bank from 21.10.2011 is illegal, unjust and abinitio void. She is entitled to be reinstated in service of the Management Bank with full back wages, continuity of service and all other attended benefits.

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

Dictated to the Personal Assistant, transcribed and passed by me on this the 24th day of February, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Worker:-

- WW1 - Smt. Zeenath Babu, dt.03.12.2015
WW2 - Shri.V.N. Krishnan , dt.17.06.2016

Witness for the Management:-

- MW1 - N.V. Ouseph, dt.16.05.2017
MW2 - Shri. Ziyad Rahuman M dt.30.04.2019

Exhibits for the Worker:-

- W1 - True copy of representation dt.23.10.2011 filed by workman before the Asst. Labour Commissioner (Central)
W2 - True copy of the letter No. 07(12)/2011/ALC/TVM dt.05.12.2011 by Asst. Labour Commissioner (Central)
W3 - Written statement of the management dt. 06.02.2012 before the Asst. Labour Commissioner (Central), Trivandrum
W4 - Rejoinder filed by workman dt.27.02.2012 before the Asst. Labour Commissioner (Central)
W5 - Minutes of the conciliation proceedings dt.05.03.2012 of the Asst.Labour Commissioner (Central), Trivandrum
W6 - Failure of conciliation report of the Asst.Labour Commissioner (Central), Trivandrum dt.15.04.2012
W7 - True copy of letter dt.04.03.2013 issued by the Dy.General Manager, Bank of Baroda, Zonal Office, Chennai under RTI Act
W8 - True copy of Tripartite Settlement dt.18.03.2008 between Bank of Baroda and All India Bank of Baroda Employees' Federation
W9 - True copy of Settlement dt.25.11.2013 between the management of Union Bank of India and the All India Bank of Union Bank of India Employees' Association
W10 - True copy of Memorandum of Settlement dt.25.06.2013 between the management of Bank of India and Federation of Bank of India Staff Unions
W11 - True copy of letter dt.09.04.2013 of Asst.General Manager, State Bank of Travancore, Head Office, Trivandrum enclosing a Memorandum of Settlement dt.21.10.2011 between the management of SBT and SBT Employees Union
W12 - True copy of Memorandum of Settlement dt.30.08.2014 between the management of Canara Bank and Canara Bank Employees Union
W13 - True copy of DBOD.CORIA No.15968/04.03.001.2013/13 dt.09.05.2013 issued by Reserve Bank of India
W14 - True copy of letter dt. 27.02.2013 issued by the Dy. Manager, Bank of Baroda, Corporate Center, Bombay under RTI Act, 2005
W15 - True copy of Fax message from Branch Manager, Bank of Baroda, Palai branch to the Asst.General Manager, Bank of Baroda, Ernakulam

Exhibits for the Management:-

- M1 - True copy of the HR Resourcing Policy of Bank of Baroda
- M2 - Copy of E-mail circular dt.19.02.2013 issued by the HRM Dept of Bank of Baroda
- M3 - True copy of available debit vouchers relating to wages paid to Series temporary employees from 10.10.2009 to 31.12.2012
- M4 - True copy of the ledger account statement of Sundry charges. Account No.33020054511004 of Palai branch from 10.09.2009 to 31.12.2012
- M5 - Copy of return of bonus paid to employees on Form C & D by the Branch for the financial year 2010-2011 and 2011-2012
- M6 - True copy of the statement of Account no.33020100000296 maintained at Palai branch from 24.01.2010 to 31.12.2012.
- M7 - True copy of the statement of bonus account no.33020052431001 maintained at Palai branch from 10.09.2009 to 31.12.2012
- M8 - True copy of debit vouchers relating to bonus paid to
- M8(a) temporary employees to the debit account no.33020052431001 for the financial year 2009-10 to 2010-11